



**SPECIAL MEETING OF  
BELMONT CITY COUNCIL  
TUESDAY, May 13, 2014, 6:30 P.M.  
ONE TWIN PINES LANE, SUITE 360, BELMONT, CA  
And**

**Disney's Animal Kingdom Lodge  
2901 Osceola Pkwy  
Lake Buena Vista, FL 32830  
(Teleconference location of Mayor Lieberman)**

**AGENDA**

**NOTICE IS HEREBY GIVEN** of a Special Meeting called by Mayor Lieberman pursuant to Government Code Section 54956 for the following item:

In Compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk at 650/595-7413. The speech and hearing-impaired may call 650/637-2999 for TDD services. Notification in advance of the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

**1. ROLL CALL**

**2. PUBLIC COMMENTS**

*Persons wishing to orally address the Council on the items of business listed below will be given an opportunity to do so before or during the Council's consideration of the item.*

**ADJOURN TO CLOSED SESSION TO CONSIDER:**

- 3. Conference with Labor Negotiator, Greg Scoles, pursuant to Government Code Section 54957.6: BPOA (Belmont Police Officers Association)**

**ADJOURN TO REGULAR MEETING**

**BELMONT CITY COUNCIL  
and  
BELMONT FIRE PROTECTION DISTRICT BOARD**

Belmont City Hall  
One Twin Pines Lane, Belmont, CA  
and  
Disney's Animal Kingdom Lodge  
2901 Osceola Pkwy  
Lake Buena Vista, FL 32830  
(Teleconference location of Mayor Lieberman)



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**AGENDA  
Tuesday, May 13, 2014**

**7:00 P.M. REGULAR MEETING**  
(City Council Chambers)

- 1. ROLL CALL**
- 2. PLEDGE OF ALLEGIANCE**
- 3. REPORT FROM CLOSED SESSION**
- 4. SPECIAL PRESENTATIONS**
  - A. Proclamation Declaring May 18-24, 2014 as Public Works Week
- 5. PUBLIC COMMENTS AND ANNOUNCEMENTS**

*This agenda category is limited to 15 minutes, with a maximum of 3 minutes per speaker, and is for items of interest not on the Agenda. If you wish to address the hearing body, please complete a Speaker's Card and give it to the City Clerk. If you wish to express an opinion on a non-agenda item without addressing the Council/Board, please fill out a "Comment Form" and give to the City Clerk. The reading of the full text of ordinances and resolutions will be waived unless a Councilmember requests otherwise.*
- 6. COUNCIL MEMBER COMMENTS AND ANNOUNCEMENTS**
- 7. AGENDA AMENDMENTS (if any)**

## 8. **CONSENT CALENDAR**

*Consent Calendar items are considered to be routine and will be enacted by one motion. There will be no separate discussion on these items unless members of the Council/Board or staff request specific items to be removed for separate action.*

- A. Minutes of Special and Regular City Council Meeting of April 8, 2014, and Regular Belmont Fire Protection District Meeting of April 8, 2014
- B. Ordinance Adopting Procedures and Requirements for Consideration of Development Agreements
- C. Resolution of the Belmont Fire Protection District Authorizing the Purchase of Two Sharp Aquos 80" Smart TV Monitors from Costco Wholesale in an amount not to Exceed \$6,744.94 for use in the City's Emergency Operations Center (EOC)
- D. Resolution of the City Council Approving Amendment #2 with Whitlock and Weinberger Transportation, Inc. for an Amount not to Exceed \$14,000 for Additional Scope of Work not included in the Ralston Avenue Corridor Study and Improvements Project
- E. Resolution of the City Council Authorizing the Renewal of a Three Year Service Agreement with Mission Communication, LLC, a Sole Provider, for Supervisory Control and Data Acquisition (SCADA) Communication for the Sewer and Storm Pump Stations for an Amount not to Exceed \$32,373
- F. Resolution of the City Council Authorizing a Purchase Order for Engineered Wood Fiber from Jetmulch Company in an Amount Not to Exceed \$10,000
- G. Resolution of the City Council Authorizing the Purchase of Furniture for the Twin Pines Senior and Community Center in an Amount Not to Exceed \$40,000
- H. Resolution of the City Council Approving a Service Agreement with Stifel, Nicolaus & Company, Inc. to Perform Services as Financial Advisor
- I. Resolution of the City Council Approving Plans and Specifications, Authorizing Advertisement for Sealed Bids, and Authorizing the City Manager to Execute a Contract with the Lowest Responsible Bidder for an Amount not to Exceed \$640,000, and Approving a Ten Percent Construction Contingency for the Ralston Avenue Sanitary Sewer Main Replacement Project (between Notre Dame Avenue and South Road), City Contract Number 2014-526, and Amendment to the FY 2014 Budget for a Supplemental Appropriation
- J. Resolution of the City Council Authorizing the City Manager to Enter into a Five Year Agreement with Astound Broadband, LLC for Internet Service for an Annual Amount not to Exceed \$9,341 and Resolution Authorizing the City Manager to Enter into a One Year Contract with AT&T Business Solutions for Telecommunication Services for an Amount not to exceed \$14,879

- K. Resolution of the City Council Authorizing the Issuance of a Purchase Order to Xtelesis Corporation to Procure, Install and Maintain a Telephone System for an Amount not to Exceed \$120,508 and Resolution Authorizing the City Manager to Enter into a Three Year Agreement with U.S. TelePacific Corporation for Telecommunication Services for an Annual Amount not to Exceed \$36,752

- L. Waive further reading of ordinances

**ACTION: 1) Motion to approve the Consent Calendar.**

**9. HEARINGS (None)**

**10. OTHER BUSINESS**

- A. An Ordinance of the City of Belmont Amending Belmont City Code Chapter 22 Regarding the Construction, Maintenance and Repair of Sidewalks

**ACTION:**

- 1) Motion to introduce ordinance and set the second reading and adoption for May 27, 2014**

- B. Update Regarding Downtown Revitalization, Belmont Village, and 2035 General Plan Update Project

**ACTION:**

- 1) Establish City Council subcommittee to evaluate project consultant proposals**

**11. COMMISSION, COMMITTEE, AND COUNCIL INTERGOVERNMENTAL ASSIGNMENT UPDATES, AND STAFF ITEMS**

- A. Verbal report from Councilmembers on Intergovernmental (IGR) and Subcommittee Assignments
- B. Council Intergovernmental Assignments for 2014 - Update (continued from April 22, 2014)
- C. Verbal Report from City Manager

**12. PUBLIC COMMENTS AND ANNOUNCEMENTS (if any)**

*For comments that could not be covered in the initial comment period.*

**13. MATTERS OF COUNCIL INTEREST/CLARIFICATION**

*Items in this category are for discussion and direction to staff only. No final policy action will be taken by Council/Board.*

**14. ADJOURNMENT**



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Meeting information can also be accessed via the internet at: [www.belmont.gov](http://www.belmont.gov). All staff reports will be posted to the web in advance of the meeting, and any writings or documents provided to a majority of the City Council/District Board regarding any item on this agenda will be made available for public inspection in the City Clerk's Office, One Twin Pines Lane, Suite 375, during normal business hours and at the Council Chambers at City Hall, Second Floor, during the meeting.

*Meeting televised on Comcast Channel 27, and webstreamed via City's website at [www.belmont.gov](http://www.belmont.gov)*

**Minutes of Special and Regular Meeting of April 8, 2014**  
**One Twin Pines Lane**

**CONVENE CLOSED SESSION 6:00 P.M.**

- A. Conference with Labor Negotiator, Greg Scoles, pursuant to Government Code Section 54957.6: BPOA (Belmont Police Officers Association)

**COUNCILMEMBERS PRESENT:** Reed, Braunstein, Stone, Lieberman

**STAFF PRESENT:** City Manager Scoles, City Attorney Rennie, Human Resources Director Dino, Finance Director Fil, Police Chief DeSmidt, Negotiator Doughty. City Clerk Cook was excused from attending.

**RECESS** at this time, being 6:30 p.m.

**CONVENE STUDY SESSION 6:35 P.M. (Emergency Operations Center)**

**Update on the Ralston Avenue Corridor Study and Discussion and Direction Regarding the Draft Multi-Modal Transportation Improvement Concepts**

**COUNCILMEMBERS PRESENT:** Reed, Braunstein, Stone, Lieberman

**STAFF PRESENT:** City Manager Scoles, City Attorney Rennie, Public Works Director Oskoui, Community Development Director de Melo, City Engineer Alvarez, Assistant City Engineer Palatnik, Finance Director Fil, City Treasurer Violet, City Clerk Cook.

Public Works Director Oskoui stated that the purpose of the Ralston Corridor Study was to improve multi-modal transportation on Ralston Avenue. He described the public outreach that has been done to date.

**Mark Spencer**, Consultant, provided an overview of the process for the corridor study and the public outreach that has been performed to date. He noted this is a community-driven plan. He outlined vehicular, bicycle and pedestrian volumes, as well as collision data. He described the four segments of the study, some of the suggested options, and the associated costs for implementing solutions in each segment.

Mr. Spencer indicated that the overarching goal is safety.

Discussion ensued regarding speed limits on Ralston Avenue, and other traffic calming measures that could be implemented. Discussion also ensued regarding providing for a continuous bike lanes or redirecting bicycles off Ralston in certain areas. Discussion also ensued regarding the level of public outreach.

Councilmember Braunstein expressed support for more public outreach. He indicated that the strength of any plan is based on input.

Councilmember Reed stated that the plan is balanced.

Mayor Lieberman suggested prioritizing the recommendations and providing information on how to phase them in. He noted that the proposed bike lane through Twin Pines Park needs to be addressed.

Council concurred to take public comment during the Public Comment portion of the Regular Meeting.

## **REGULAR MEETING**

### **CALL TO ORDER 7:40 P.M.**

#### **ROLL CALL**

**COUNCILMEMBERS PRESENT:** Reed, Braunstein, Stone, Lieberman

**STAFF PRESENT:** City Manager Scoles, City Attorney Rennie, Public Works Director Oskoui, Community Development Director de Melo, Parks and Recreation Director Gervais, Deputy Fire Chief Keefe, Finance Director Fil, Assistant Finance Director Lazzari, City Treasurer Violet, City Clerk Cook.

#### **PLEDGE OF ALLEGIANCE**

Led by Finance Director Fil.

#### **REPORT FROM CLOSED SESSION**

City Attorney Rennie indicated that a Closed Session was held and there was no reportable action.

#### **PUBLIC COMMENTS AND ANNOUNCEMENTS**

**Huan Pham, Kevin Sullivan, Emma Shlaes, Henry Roth, Andrew Boone, Valerie Dohrenwend, Brian Leckey, Paul Wendt and Russ Bentsen** spoke regarding the Ralston Avenue Corridor Study.

**Linda Allen** spoke regarding rent control.

**Birgit Merian** spoke regarding the pending appeal by AT&T for a wireless installation at 1999 Notre Dame Avenue.

**Perry Kennan** spoke regarding the initiation of bike sharing program.

#### **COUNCIL MEMBER COMMENTS AND ANNOUNCEMENTS**

Councilmember Stone described a bike ride that he and Councilmember Braunstein took on Ralston Avenue in advance of and in preparation for tonight's discussion on the Ralston Corridor study.

Councilmember Braunstein expressed the need for Councilmembers to acknowledge each other's accomplishments. He congratulated Councilmember Stone for participating in Principal for a Day at Cipriani School.

Mayor Lieberman made announcements regarding the new Belmont history book signing event, the next Firehouse Square meeting, the upcoming Egg Hunt, and activities for Earth Day.

### **AGENDA AMENDMENTS**

City Clerk Cook noted that the Special Meeting Minutes of March 3, 2014 were listed on the agenda for approval but were not included in the packet. She indicated these would be forwarded to Council on the next agenda.

Mayor Lieberman noted that the Public Hearing on the Talbryn Drive matter was going to be continued to April 22<sup>nd</sup>. He suggested moving that item up on the agenda in order to accommodate any public comments. He also recommended moving the action to appoint a new Councilmember to be heard following the Talbryn matter. Council concurred.

City Clerk Cook noted that a member of the public requested to speak regarding the Consent Agenda Item approving the purchase of waste collection enclosures.

### **ITEMS APPROVED CONSENT CALENDAR**

**Minutes** of Special City Council Meetings of February 27, 2014, and March 18, 2014

**Resolution 2014-053** of the City Council Authorizing the Use of the National Joint Powers Alliance (NJPA) Procurement Contract for the Acquisition of a New Elgin Street Sweeper for a Total Amount not to Exceed \$285,000

**Resolution 2014-054** of the City Council Authorizing the Installation of Security Lights to the Canopy Area at the City's Corporation Yard in an Amount Not to Exceed 12,000.

**Resolution 2014-008** of the Belmont Fire Protection District Authorizing a Purchase Order to L.N. Curtis & Sons in an Amount not to Exceed \$8,087.80 for Firefighter Turnout Garments

**Resolution 2014-055** of the City Council and an Ordinance of the Board of Directors of the Fire Protection District Modifying the Regular Meeting Schedule

**ACTION:** On a motion by Councilmember Stone, seconded by Councilmember Braunstein, the Consent Agenda was unanimously approved, as amended.

Mayor Lieberman suggested that the style of City Council meeting minutes be briefer, especially those that are televised. He indicated that details can be obtained by watching the video. Council concurred.

### **ITEM REMOVED FROM CONSENT AGENDA FOR SEPARATE CONSIDERATION**

**Resolution of the City Council Authorizing the Purchase of Waste Collection Enclosures for City Parks and Athletic Fields in an Amount not to Exceed \$45,000**

**Karl Mittelstadt**, Parks and Recreation Commissioner, stated that this matter was not discussed by the Parks and Recreation Commission.



Parks and Recreation Director Gervais indicated that he previously shared a newspaper article regarding this topic with the Commissioners who expressed no concerns. He indicated that the majority of funds would be from a grant, which needs to be spent by July. He recommended a parallel process that if there is a desire to have the Commission review this matter.

Councilmember Braunstein stated that it is not unusual for C/CAG to extend grant deadlines. He pointed out that this is not the first time that concerns have been raised regarding grants and the timing of when they are presented to the Council for approval. He indicated that he heard from two Commissioners with concerns regarding the current proposal. He stated that he could approve the grant application but he expressed support in having the Parks and Recreation Commission review this matter.

Discussion ensued regarding the roles and responsibilities of commissions. Council concurred with the need for a future discussion on this topic.

**ACTION:** Councilmember Braunstein made a motion to approve the resolution and to refer the matter to the Parks and Recreation Commission for review and approval. This motion died for lack of a second.

**ACTION:** On a motion by Councilmember Stone, seconded by Councilmember Reed, Resolution 2014-056 of the City Council Authorizing the Purchase of Waste Collection Enclosures for City Parks and Athletic Fields in an Amount not to Exceed \$45,000 was approved (3-1, Braunstein no), said motion to include an informational report to the City Council outlining the Parks and Recreation Commission's future discussion on this topic.

## **HEARINGS**

### **Public Hearing to Consider a Street Vacation, Four-Lot Single Family Residential Parcel Map, and Environmental Assessment for Property located at 1320 Talbryn Drive**

Mayor Lieberman indicated that this matter would be continued to April 22, 2014, and the City Council did not receive any background material regarding this matter.

**David Kramer**, **Elaine Patterson**, **Steve Braat**, **Alvin Richards**, **Patti Smith**, **Anne Moltochanoff**, and **Paul Wendt** spoke regarding this project.

**ACTION:** On a motion by Councilmember Reed, seconded by Councilmember Stone, this Public Hearing was unanimously continued to April 22, 2014

## **COMMISSION, COMMITTEE, AND COUNCIL INTERGOVERNMENTAL ASSIGNMENT UPDATES, AND STAFF ITEMS**

**A Resolution of the City Council of the City of Belmont Appointing a Resident to the City Council to Fill a Vacancy in a Term Expiring After the November 2015 General Election** (item taken out of order)

Councilmember Braunstein stated candidate Cathy Wright has a background in public office, has dealt with constituents, adoption of a public budget, and has other perspectives to bring to the table.

Councilmember Reed stated that he was seeking an independent thinker. He pointed out that Ms. Wright has more experience as an elected official than most of the City Council. She has had to deal with angry constituents.

Councilmember Stone concurred, and pointed out her experience with public employees, labor groups, and infrastructure.

Mayor Lieberman stated that he could have supported four of the five candidates that were interviewed, and that three of them stood out, Ms. Wright being one of them. He noted that he served with her as part of the City/school district 2+2 committee. He expressed a desire to choose someone who can best represent the interests of Belmont.

**ACTION:** On a motion by Councilmember Braunstein, seconded by Councilmember Stone, Resolution 2014-057 Appointing Cathy Wright to a vacant term on the City Council that expires in November of 2015 was unanimously approved.

**RECESS:** 9:10 P.M.  
**RECONVENE:** 9:20 P.M.

**OTHER BUSINESS**

**Budget Strategic Planning for FY 2015**

Finance Director Fil indicated that this item is the first step in process for the next year's budget. He provided a recap of the current year budget and indicated that revenues and expenditures were on track. He reviewed factors that would be used to develop the new budget, and recapped the City Council's priorities as discussed at the March 28<sup>th</sup> workshop. He described the deferred capital needs, and pointed out that the ad hoc infrastructure committee was continuing its efforts regarding this. He outlined options on how to address the gap in funding for asset management.

Councilmember Reed expressed support for additional staffing for the Community Development Department and a desire to fully fund the Davey Glen Park development.

Finance Director Fil stated that the Community Development Department's staffing can be augmented with consultants as needed. He noted that new park development funds or an advance from Quimby Act funds could address the Davey Glen Park funding.

Discussion ensued regarding the Davey Glen Park development. Mayor Lieberman suggested allocating some of the monies from the San Juan sale to augment funding for Davey Glen. Council concurred to consider this option if funds are needed.

**Perry Kennan** spoke regarding difficulties in analyzing data from the budget document, as well as the need to update the General Plan and to seek new revenue sources such as an increase in the hotel tax.

Discussion ensued and Council concurred to revisit the transit occupancy tax (TOT) and directed staff to provide further analysis regarding funding options for the completion of Davey Glen Park.

### **COMMISSION, COMMITTEE, AND COUNCIL INTERGOVERNMENTAL ASSIGNMENT UPDATES, AND STAFF ITEMS (continued)**

#### **Verbal report from Councilmembers on Intergovernmental (IGR) and Subcommittee Assignments**

Councilmember Stone described a mock meeting he facilitated with second graders from Nesbit School.

#### **Verbal Report from City Manager**

City Manager Scoles reported on the Firehouse Square workshop, the City Council's March 28<sup>th</sup> priorities workshop, the rollout of the new website, and the receipt of a \$150,000 grant for pedestrian and bicycle improvements on Notre Dame Avenue.

#### **Ralston Avenue Corridor Study and Discussion and Direction Regarding the Draft Multi-Modal Transportation Improvement Concepts** (continued)

Mayor Lieberman suggested additional outreach to Notre Dame de Namur University as a major stakeholder. He also suggested addressing the speed limit on upper Ralston Avenue and the addition of school signs.

Public Works Director Oskoui indicated that these issues can be addressed outside of the scope of the Corridor Study.

Councilmember Reed suggested prioritizing components of the plan.

Councilmember Stone expressed support for improving signage, especially for bicyclists. He noted that a comprehensive plan would be needed to be able to take advantage of grants and other sources of funding.

**ADJOURNMENT at this time, being 10:20 p.m.**

**Terri Cook  
City Clerk**

Meeting audio-recorded and videotaped

DRAFT

**REGULAR MEETING OF  
DIRECTORS OF BELMONT FIRE PROTECTION DISTRICT  
Tuesday, April 8, 2014  
CITY COUNCIL CHAMBERS, ONE TWIN PINES LANE**

**REGULAR MEETING  
CALL TO ORDER 7:40 P.M.**

(Note: Belmont Fire Protection District meeting held concurrent with the City Council Meeting.)

**ROLL CALL**

BOARDMEMBERS PRESENT: Reed, Braunstein, Stone, Lieberman

BOARDMEMBERS ABSENT: None

Staff Present: District Manager Scoles, City Attorney Rennie, Deputy Fire Chief Gaffney, City Treasurer Violet, District Secretary Cook

**ITEM APPROVED ON CONSENT CALENDAR**

City Attorney Rennie read the title of the Ordinance.

**Introduction of** an Ordinance of the Board of Directors of the Fire Protection District Modifying the Regular Meeting Schedule

**ACTION:** On a motion by Director Stone, seconded by Director Braunstein, the Consent Agenda was unanimously approved.

**ADJOURNMENT** at this time being 10:45 P.M.

**Terri Cook  
District Secretary**

Meeting audio-recorded and videotaped.

## **ORDINANCE NO. \_\_\_\_\_**

### **AN ORDINANCE OF THE CITY OF BELMONT AMENDING THE BELMONT ZONING ORDINANCE (ORDINANCE NO. 360) BY ADDING SECTION 28 REGARDING DEVELOPMENT AGREEMENTS**

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WHEREAS, California Government Code Sections 65864 et seq. authorizes cities to enter into development agreements (the "Development Agreement Statute"); and,

WHEREAS, the Development Agreement Statute requires that the City, upon request by an applicant, adopt a resolution or ordinance specifying procedures and requirements for consideration of development agreements; and,

WHEREAS, Crystal Springs Upland School has proposed entering into a development agreement with the City; and,

WHEREAS, the City of Belmont does not currently have a procedure for processing development agreement applications;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BELMONT DOES ORDAIN AS FOLLOWS:

#### **SECTION 1. BZO SECTION 28 ADDED**

City of Belmont Ordinance No. 360 ("Belmont Zoning Ordinance") is amended by adding Section 28 to read:

#### **SECTION 28 – DEVELOPMENT AGREEMENTS**

- §28.1. Citation and authority.
- §28.2. Purpose.
- §28.3. Applicability.
- §28.4. Forms, information and fees.
- §28.5. Review of application.
- §28.6. Notice of public hearing.
- §28.7. Review by planning commission.
- §28.8. Decision by city council.
- §28.9. Approval of development agreement.
- §28.10. Amendment or cancellation.
- §28.11. Recordation.
- §28.12. Periodic review.
- §28.13. Modification or termination.

##### **Sec. 28.1 Citation and authority.**

This section is adopted in accordance with Government Code Title 7, Division 1, Chapter 4, Article 2.5, Section 65864 et seq. and may be cited as the Development Agreement Ordinance of the City of Belmont.

**Sec. 28.2 Purpose.**

The purpose of this Section is to strengthen the public planning process, encourage private participation and comprehensive planning, and reduce the economic costs of development by providing an option to both the city and developers to enter into development agreements.

**Sec. 28.3 Applicability.**

The procedures and requirements set forth in this Section shall apply to all development agreements proposed by developers and entered into by the city council.

**Sec. 28.4 Forms, information and fees.**

(a) A person having a legal or equitable interest in real property may apply for a development agreement. The community development director shall prescribe the application form for development agreements.

(b) The city may require an applicant to submit such information and supporting data as the community development director considers necessary to process the application.

(c) Each application shall be accompanied by the development agreement proposed by the applicant.

(d) The applicant shall reimburse the city for all its reasonable and actual costs, fees, and expenses, including legal counsel and special counsel fees, for preparation and review of an application for a development agreement. The city council may by resolution fix the schedule of fees and charges imposed for the filing and processing of each development agreement application and for the annual review.

**Sec. 28.5 Review of application.**

The community development director shall review the application and determine any additional information necessary to process the application. After the required information is received, a staff report and recommendation shall be prepared and shall state whether or not the agreement, as proposed or in an amended form, would be consistent with the general plan and any applicable specific plan and shall describe the public benefits provided by the proposed agreement.

**Sec. 28.6 Notice of public hearing.**

(a) The timing and manner of giving notice of public hearings on the development agreement shall be as prescribed in Government Code Section 65867.

(b) The notice to consider adoption of the development agreement shall contain:

(1) The time and place of the hearing.

(2) A general explanation of the matter to be considered, including a general description of the area to be affected; and

(3) Other information required by law or which the community development director

considers necessary or desirable.

**Sec. 28.7 Review by planning commission.**

(a) The planning commission shall hold a public hearing on the development agreement and shall make a written recommendation to the city council.

(b) The planning commission's recommendation shall include a determination whether or not the proposed development agreement:

(1) Is consistent with the objectives, policies, general land uses and programs specified in the general plan and any applicable specific plan;

(2) Is consistent with the zoning and other land use regulations applicable to the property.

**Sec. 28.8 Decision by city council.**

(a) The city council shall hold a public hearing, after which it may accept, modify or disapprove the recommendation of the planning commission.

(b) The city council may not approve the development agreement unless it finds that the provisions of the agreement are consistent with the general plan and any applicable specific plan and are consistent with the zoning and other land use regulations applicable to the property.

**Sec. 28.9 Approval of development agreement.**

If the city council approves the development agreement, it shall do so by the adoption of an ordinance. The agreement takes effect upon the effective date of the ordinance.

**Sec. 28.10 Amendment or cancellation.**

(a) The parties may mutually agree to amend or cancel in whole or in part the development agreement previously entered into.

(b) The procedure for proposing and adopting an amendment to or cancellation in whole or in part of the development agreement is the same as the procedure for entering into an agreement.

**Sec. 28.11 Recordation.**

(a) Within ten days after the city enters into the development agreement, the city clerk shall have the agreement recorded with the county recorder.

(b) If the parties to the agreement amend or cancel the agreement as provided in Section 28.10 or modify or terminate the agreement as prescribed in Section 28.13 for failure of the applicant to comply in good faith with the terms or conditions of the agreement, the city clerk shall have notice of such action recorded with the county recorder.



**Sec. 28.12****Periodic review.**

(a) The city shall review the development agreement every twelve months from the date the agreement is entered into. It is the developer's responsibility to apply in a timely fashion for the annual review. The date for the annual review may be modified either by agreement between the parties or at the city's initiation, upon recommendation of the community development director, and by an affirmative vote of a majority of the planning commission.

(b) The community development director shall give notice to the property owner that the city intends to undertake the review of the development agreement. He shall give the notice at least ten days in advance of the time at which the matter will be considered by the planning commission.

(c) The planning commission shall conduct a public hearing determine whether the property owner is in good faith compliance with the terms of the agreement. The burden of proof, by substantial evidence, of good faith compliance shall be upon the property owner.

(d) The planning commission shall determine based on substantial evidence whether or not the property owner has, for the period under review, complied in good faith with the terms and conditions of the agreement.

(e) If the planning commission determines based on substantial evidence that the property owner has complied in good faith with the terms and conditions of the agreement during the period under review, the review for that period is concluded.

(f) If the planning commission determines based on substantial evidence that the property owner has not complied in good faith with the terms and conditions of the agreement during the period under review, the planning commission shall forward its recommendation to the city council, and the city council may modify or terminate the agreement.

**Sec. 28.13****Modification or termination.**

(a) If the city council determines based on substantial evidence that the property owner has complied in good faith with the terms and conditions of the agreement, the review for that period is concluded.

(b) If the city council determines, based upon substantial evidence, that the property owner has not complied in good faith with the terms and conditions of the agreement during the period under review, the city council may terminate or modify the agreement as provided in this subsection.

(1) Before modifying or terminating the agreement, the city shall give notice to the property owner containing:

(A) The time and place of the hearing;

(B) A statement as to whether the city proposes to terminate or to modify the development agreement; and,

(C) Other information which the city considers necessary to inform the property owner of the nature of the proceedings.

- (2) At the time and place set for the hearing on modification or termination, the property owner shall be given an opportunity to be heard.
- (3) The city council may refer the matter back to the planning commission for further proceedings or for report and recommendation.
- (4) The city council may impose those conditions to the action it takes as it considers necessary to protect the public health, safety, or welfare.
- (5) The decision of the city council is final.

## SECTION 2. CEQA EXEMPTION

The City Council finds, under Title 14 of the California Code of Regulations, Section 15061(b)(3), that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project which has the potential for causing a significant effect on the environment. The Council therefore directs that a Notice of Exemption be filed with the San Mateo County Clerk in accordance with the CEQA guidelines.

## SECTION 3. EFFECTIVE DATE.

This Ordinance shall take effect and will be enforced thirty (30) days after its adoption.

## SECTION 4. PUBLICATION AND POSTING

The City Clerk has caused to be published a summary of this ordinance, prepared by the City Attorney under Government Code Section 36933, subdivision (c) of the, once, in a newspaper of general circulation printed and published in San Mateo County and circulated in the City of Belmont, at least five days before the date of adoption. A certified copy of the full text of the ordinance was posted in the office of the City Clerk since at least five days before this date of adoption. Within 15 days after adoption of this ordinance, the City Clerk shall cause the summary of this ordinance to be published again with the names of those City Council members voting for and against the ordinance; and the City Clerk shall post in the office of the City Clerk a certified copy of the full text of this adopted ordinance with the names of those City Council members voting for and against the ordinance.

\* \* \*

The City Council of the City of Belmont, California introduced the foregoing ordinance, on April 22, 2014 and adopted the ordinance at a regular meeting held on May 13, 2014 by the following vote:

Ayes:

Noes:

Absent:

Abstain:

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney



# STAFF REPORT

Meeting Date: May 13, 2014

Agenda Item # 8C

**Agency:** Belmont Fire Protection District

**Staff Contact:** Michael Gaffney, Belmont Fire District, 650-595-7492, [mgaffney@belmont.gov](mailto:mgaffney@belmont.gov)

**Agenda Title:** Resolution of the Belmont Fire Protection District Authorizing the Purchase of Two Sharp Aquos 80" Smart TV Monitors with Mounting Brackets from Costco Wholesale in an Amount not to Exceed \$6,744.94 for Use in the City's Emergency Operations Center (EOC)

**Agenda Action:** Resolution

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## **Recommendation**

Authorize the purchase of two Sharp Aquos 80" Smart TV Monitors with mounting brackets in an amount not to exceed \$6,744.94.

## **Background**

Since 2005 the City's Emergency Operations Center (EOC) has been located in the large room next to the Council Chambers. This space is also frequently utilized for meetings and/or training sessions both for city staff and the public. As part of the room's original configuration, two 42" LCD monitors were installed, the goal of which was to provide both information sharing during an emergency in which the EOC is activated, as well as audio-visual access during meetings and/or training sessions.

## **Analysis**

City staff has identified the need to re-configure the space within the EOC to better coordinate the access and flow of information during EOC operations. This includes the need to replace the existing monitors with one's that are both larger and have greater technical capability. The purchase and installation of these monitors will:

- Assist EOC personnel with displaying and analyzing situational status (SITSTAT), resource status (RESTAT) and media information associated with a significant event(s) within the city resulting in a partial or full EOC activation.
- Be utilized as a tool for information sharing via power point presentations and/or internet access while the room is being utilized for meetings and/or training sessions.

## **Alternatives**

1. Take no action.
2. Refer back to staff for further information.

## **Attachments**

- A. Resolution

**Fiscal Impact**

- ☐ No Impact/Not Applicable  
☒ Funding Source Confirmed: There are sufficient funds in Fund 223 Belmont Fire Protection District specifically for this purpose.
- 

**Source:**

- ☐ Council  
☒ Staff  
☐ Citizen Initiated  
☐ Other\*

**Purpose:**

- ☐ Statutory/Contractual Requirement  
☐ Council Vision/Priority  
☒ Discretionary Action  
☐ Plan Implementation\*

**Public Outreach:**

- ☒ Posting of Agenda  
☐ Other\*

\*

## **RESOLUTION NO.**

### **A RESOLUTION OF THE BOARD OF DIRECTORS OF THE BELMONT FIRE PROTECTION DISTRICT AUTHORIZING THE PURCHASE OF TWO SHARP AQUOS 80" SMART TV MONITORS WITH MOUNTING BRACKETS FROM COSTCO WHOLESALE IN AN AMOUNT NOT TO EXCEED \$6,744.94**

---

WHEREAS, since 2005 the City's Emergency Operations Center (EOC) has been located on the second floor of City Hall; and,

WHEREAS, this space is also frequently utilized for meetings and/or training sessions both for city staff and the public; and,

WHEREAS, as part of the room's original configuration, two 42" LCD monitors were installed to provide both information sharing during an emergency in which the EOC is activated as well as audio-visual access during meetings and/or training sessions; and,

WHEREAS, city staff has identified the need to reconfigure the space within the EOC to better coordinate the access and flow of information during EOC operations, including needing to replace the existing monitors with one's that are larger and have greater technical capability; and,

WHEREAS, the purchase and installation of these monitors will assist EOC personnel with displaying and analyzing information associated with a significant event(s) within the city as well as be utilized as a tool for information sharing for meetings and/or training sessions.

NOW, THEREFORE, the Board of Directors of the Belmont Fire Protection District resolves as follows:

**SECTION 1.** The District Manager is authorized to purchase two Sharp Aquos 80" Smart TV Monitors with mounting brackets from Costco Wholesale for an amount not to exceed \$6,744.94.

\* \* \*

ADOPTED May 13, 2014, by the Board of Directors of the Belmont Fire Protection District by the following vote:

Ayes:

Noes:

Absent:

Abstain:

ATTEST:

\_\_\_\_\_  
Board Secretary

\_\_\_\_\_  
Board President

APPROVED AS TO FORM:

\_\_\_\_\_  
District Counsel



# STAFF REPORT

Meeting Date: May 13, 2014

Agenda Item #8D

**Agency:** City of Belmont

**Staff Contact:** Bozhena Palatnik, Public Works, 595-7463, bpalatnik@belmont.gov

**Agenda Title:** Resolution Approving Amendment #2 with Whitlock and Weinberger Transportation, Inc. for an Amount not to Exceed \$14,000 for Additional Scope of Work not included in the Ralston Avenue Corridor Study and Improvements Project

**Agenda Action:** Resolution

---

## **Recommendation**

Approve Amendment #2 to the Professional Services Agreement with Whitlock and Weinberger Transportation, Inc. for an amount not to exceed \$14,000 for additional scope of work not included in the Ralston Avenue Corridor Study and Improvements Project.

## **Background**

On February 12, 2013, Council approved a Professional Services Agreement with Whitlock and Weinberger Transportation, Inc. for an amount not to exceed \$141,035 and authorized \$8,965 contingency for the Ralston Avenue Corridor Study. Work under this Agreement included data collection, three community outreach meetings, three stakeholder meetings, one Council presentation and development of conceptual alternatives for the corridor.

On April 8, 2014, staff issued Amendment #1 for an amount not to exceed \$8,965 using the approved contingency. The scope of work covered by this Amendment included presentation at the Parks and Recreation Commission, an additional meeting with stakeholders and edits to the conceptual improvement report stemming from these meetings.

## **Analysis**

On April 8, 2014, City Council directed staff, along with the consultants to conduct an additional public meeting to finalize the conceptual improvements. After the final improvements, the report shall be brought back to City Council for action. This work was not covered by the original scope of work or Amendment #1, and therefore requires additional funds. The cost of this task is \$5,990.

In late March 2014, the California Department of Transportation (Caltrans) issued a call for projects under Active Transportation Program (ATP) that would provide an opportunity to apply for multiple grants to cover improvements along the Ralston Corridor with potential grant funds in the amount of up to \$10,000,000. The applications for ATP grant are due to Caltrans on May 21, 2014. Due to the extensive requirements of the grant application, limited timeframe, and lack of resources, staff required the help of the consultant to prepare the application for an additional cost of \$8,010.

## **Alternatives**

1. Take no action
2. Refer back to staff for more information





## STAFF REPORT

**Agency:** City of Belmont

**Staff Contact:** Bill Mitchell, IT Director (650) 637-2970 bmittchell@belmont.gov

**Agenda Title:** Resolution Authorizing the Issuance of a Purchase Order to Xtelesis Corporation to Procure, Install and Maintain a Telephone System for an Amount not to Exceed \$120,508 and Resolution Authorizing the City Manager to Enter into a Three Year Agreement with U.S. TelePacific Corporation for Telecommunication Services for an Annual Amount not to Exceed \$36,752.

**Agenda Action:** Resolution

---

### **Recommendation**

Adopt resolutions that: 1) Authorize the City Manager to execute a purchase order to Xtelesis Corporation for telephone equipment, technical services, training and five years of maintenance for an amount not to exceed \$120,508; and 2) Authorize the City Manager to enter into a three year agreement with U.S. TelePacific Corporation. for telecommunication services for an annual amount not to exceed \$36,752.

### **Background**

In 1996 the City entered into an agreement to outsource telephone services. The agreement included hardware, software, phone administration, maintenance and associated telecommunication services. Today, the cost of these services is \$8,993 per month which equates to \$107,916 annually.

Information Technology reviewed options to our current telephone agreement and determined the City was best served by purchasing a telephone system and associated telecommunication services. Additionally, Information Technology staff would provide the management and administration of the phone system. Benefits are as follows:

- Cost Savings
- Improved Operational Efficiency
- Mobile Device (Smartphone & Tablet) Integration
- One Network for Voice and Data – (Reduced Cost and Less Moving Parts)

### **Analysis**

Analysis will be broken down into two parts, Phone System and Telecommunication Services.

#### *Phone System:*

Voice over Internet Protocol (VoIP) is the standard for today's business phone system. VoIP provides reduced cost, ease of technical management, enhanced productivity and mobility.

Information Technology reviewed several VoIP offerings and selected ShoreTel's unified communications phone system based on the following:

- Met all goals as outlined previously
  - Cost Savings
    - Defined later in this document
  - Improved operational efficiency
    - Quicker response to add/move/change requests
    - Unified Communication – move from desk phone to mobile device seamlessly
    - Availability and ease of use of advanced features (forward, transfer, conferencing)
    - Mobile Device Integration
    - Use smartphones and tablets as desk phones
    - Web and audio conferencing on desk phone, smart phone and/or tablet
  - One network for voice and data
    - ShoreTel solution will utilize existing computer network infrastructure.
- Lowest total cost of ownership as defined by Aberdeen Research
- Simple to install, manage, use and grow. Based on reference checks with neighboring cities.
- ShoreTel has won a majority of CA City RFPs in the last three years including:
  - City of Foster City, CA
  - Oakland, CA
  - Mountain View, CA
  - Burlingame, CA

Xtelesis Corporation (Xtelesis) was selected as the implementation vendor due to the following factors:

- ShoreTel recommendation: In December, 2013 Xtelesis received ShoreTel's Circle of Excellence Award. The award recognizes Xtelesis for exceptional achievement in areas including customer satisfaction, proficiency with advanced applications, and revenue growth. The Circle of Excellence Award is the highest award given by ShoreTel to its partners, less than one-half of one percent of all partners earn this distinction.
- Xtelesis recently completed the successful redesign and implementation of the City's computer network infrastructure. This infrastructure is the underlying foundation for the ShoreTel solution. Dealing with one vendor for both network and phone issues is a significant advantage.

ShoreTel hardware and licensing will be procured under the Western States Cooperative Agreement (WSCA) a Governmental Purchasing Alliance (GPA). Purchasing under this GPA meets the City's purchasing policy per Resolution 9438.

### *Telecommunication Services:*

This service allows a company's phone system to receive and make calls outside of the business.

Multiple vendors submitted proposals and the solution proposed by U.S. TelePacific Corporation (TelePacific) was chosen due to cost, ability to provide circuit redundancy, ShoreTel experience, and customer references.

The combined ShoreTel and TelePacific solutions will result in \$92,984 savings over the next three years, the contract term with TelePacific. Recovery for the ShoreTel Capital Cost is less than 2 years.

	Annual Cost			
	Year 1	Year 2	Year 3	Total Savings
<b>Current Solution</b>				
Annual Telephone Charges	\$ 107,916.00	\$ 107,916.00	\$ 107,916.00	
<b>Proposed Solution</b>				
ShoreTel Onetime Capital Cost	\$ 120,508.00			
Annual Telephone Charges	\$ 36,752.00	\$ 36,752.00	\$ 36,752.00	
<b>Annual Savings</b>	\$ (49,344.00)	\$ 71,164.00	\$ 71,164.00	\$ 92,984.00

### **Alternatives**

1. Take no action
2. Deny recommendation
3. Refer back to staff for more information and/or alternative options.

### **Attachments**

- A. Resolution
- B. Quotes
- C. Contract

### **Fiscal Impact**

- ☐ No Impact/Not Applicable
- ☒ Funding Source Confirmed: 573-1-302-9040 – Xtelesis Corporation  
Department Telephone Accounts – U.S. TelePacific Corporation.

### **Source:**

- ☐ Council
- ☒ Staff
- ☐ Citizen Initiated
- ☐ Other\*

### **Purpose:**

- ☐ Statutory/Contractual Requirement
- ☐ Council Vision/Priority
- ☐ Discretionary Action
- ☒ Plan Implementation\*

### **Public Outreach:**

- ☐ Posting of Agenda
- ☐ Other\*

\* Information Technology Work Plan

**RESOLUTION NO. 2014-**

**RESOLUTION OF THE CITY COUNCIL AUTHORIZING THE ISSUANCE OF A  
PURCHASE ORDER TO XTELESIS, INC. TO PROCURE, INSTALL AND MAINTAIN  
A TELEPHONE SYSTEM FOR AN AMOUNT NOT TO EXCEED \$120,508.**

---

WHEREAS, Information Technology strives to reduce operational expense with Voice over IP technology; and,

WHEREAS, procuring under a Governmental Procurement Alliance aligns with City purchasing policy.

NOW, THEREFORE, the City Council of the City of Belmont resolves as follows:

SECTION 1. The City Manager is authorized to execute a purchase order to Xtelesis Inc. for the procurement, installation and maintenance of a ShoreTel telephone system for an amount not to exceed \$120,508.

\* \* \*

ADOPTED May 13, 2014, by the City of Belmont City Council by the following vote:

Ayes:

Noes:

Absent:

Abstain:

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

## RESOLUTION NO. 2014-

### **RESOLUTION OF THE CITY COUNCIL AUTHORIZING THE CITY MANAGER TO ENTER INTO A THREE YEAR AGREEMENT WITH U.S. TELEPACIFIC CORPORATION FOR TELECOMMUNICATION SERVICES FOR AN ANNUAL AMOUNT NOT TO EXCEED \$36,752.**

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WHEREAS, Information Technology strives to reduce operational expense associated with telecommunication services; and,

WHEREAS, U.S. TelePacific Corporation provided the best value based on price, proposed solution and customer references; and,

WHEREAS, there are sufficient funds available for this purpose in the Information Technology Department's operating budget;

NOW, THEREFORE, the City Council of the City of Belmont resolves as follows:

SECTION 1. The City Manager is authorized to enter into a three year agreement with U.S. TelePacific Corporation for telecommunication services for an annual amount not to exceed \$36,752.

\* \* \*

ADOPTED May 13, 2014, by the City of Belmont City Council by the following vote:

Ayes:

Noes:

Absent:

Abstain:

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney



## Service Agreement

### Section 1 Customer Information

Account Number (existing acct) _____			
Company Legal Name (Individual if Sole Proprietorshi		City of Belmont, California	
Doing Business As (DBA) _____			
Contact Name and Title Bill Mitchell - IT Director			
Telephone Number	650-637-2970	Fax Number	Email bmmitchell@belmont.gov
Service Address: 110 SEM LN -			
City	BELMONT	State	CA Zip 94002

### Section 2 TelePacific Services

TelePacific will provide Customer with the specified type and amount of Services at the rates, and terms and conditions listed below, and Customer shall accept and pay for Services under the Terms and Conditions to which Customer agreed on the Telecommunications Account Agreement that governs this Service Agreement.

Description of Services	Account Term (Yrs)	QTY	Monthly Recurring Charge (MRC)	MRC Total	Set-up Charge (NRC)	NRC Total
CA Caller ID Name	3	1	\$9.50	\$9.50	\$115.00	\$115.00
Trunk Group Call Forwarding within Switch	3	1	\$15.00	\$15.00	\$40.00	\$40.00
Voice Only PRI (P)	3	1	\$414.12	\$414.12	\$500.00	\$500.00
Install Discount	3	1	\$0.00	\$0.00	(\$577.50)	(\$577.50)
CA Basic T-Pack 1000	3	2	\$35.00	\$70.00	\$0.00	\$0.00
CA Basic T-Pack 2500	3	1	\$60.00	\$60.00	\$0.00	\$0.00
Custom Bill Formatting	0	2	\$0.00	\$0.00	\$0.00	\$0.00
OneCentral	2	1	\$0.00	\$0.00	\$0.00	\$0.00
Double Dash: T-Pack Minute Bundle 1000	3	2	(\$35.00)	(\$70.00)	\$0.00	\$0.00
10 Mbps Port	3	1	\$350.00	\$350.00	\$0.00	\$0.00
10 Mbps Access	3	1	\$540.00	\$540.00	\$500.00	\$500.00
Internet	3	1	\$100.00	\$100.00	\$0.00	\$0.00
IP Addresses (block of 16)	3	1	\$0.00	\$0.00	\$0.00	\$0.00
Network Monitor option	3	1	\$0.00	\$0.00	\$0.00	\$0.00
No Router Required	3	1	\$0.00	\$0.00	\$0.00	\$0.00
T1 Card Service Addendum	3	1	\$0.00	\$0.00	\$0.00	\$0.00
Standard Local and Long Distance Rates	3	1	\$0.00	\$0.00	\$0.00	\$0.00
Ethernet Third Party ETF Pass-Through Addendum	3	1	\$0.00	\$0.00	\$0.00	\$0.00
T1 Card Credit	3	1	\$0.00	\$0.00	\$0.00	\$0.00
GM Adjustment : Bandwidth Blast Tier 1B	3	1	(\$191.00)	(\$191.00)	\$0.00	\$0.00



## Service Agreement

Sub Totals:	\$1,297.62	\$577.50
LDAC, EUCC and EUCL:	\$115.15	

Federal, State and Local Taxes and Other Charges will be applied in accordance with the definitions stated at <http://www.insidetelepacific.com/rates/rates-telepacific.asp>.

IN WITNESS WHEREOF each Party hereto has caused this Service Agreement to be executed by its duly authorized representative.

#1 (X)

Agreed By, Customer Signature	Date
<i>Bill Mitchell</i>	<i>IT Director</i>
Customer Name (Print)	Title
<i>Late Heard - Zernyung</i>	
Sales Representative Name	Phone
X	
Agreed By, Sales Manager Signature	Date

Order: 262146-040714



**City of Belmont, California**

In addition to the Terms and Conditions to which Customer has agreed on the TAA, Customer and TelePacific agree to amend and modify the Terms and Conditions of the TAA as follows:

**TelePacific Local & Long Distance Calling**

The following per-minute rates for domestic outbound local and long distance calling apply to all TelePacific provisioned voice services.

Call Type	Local (CA)		IntraLATA (CA)	Long Distance	
	Zone 1& 2	Zone 3	IntraLATA Toll	IntraState	InterState
Billing Increments	60/6	60/6	30/6	30/6	30/6
First Minute	\$0.0700	\$0.0700	\$0.059	\$0.059	\$0.059
Additional Minute	\$0.0350	\$0.0350			

Other InterState	Rate
Billing Increments	30/6
Alaska	\$0.11
Guam	\$0.24
Hawaii	\$0.10

The following per-minute rates for domestic outbound long distance calling apply to all non-TelePacific provisioned voice services associated with TelePacific's Switched Long Distance service.

Call Type	IntraLATA (CA)	Long Distance	
	IntraLATA Toll	IntraState	InterState
Billing Increments	30/6	30/6	30/6
Per-Minute Rate	\$0.059	\$0.059	\$0.059

Other InterState	Rate
Billing Increments	30/6
Alaska	\$0.11
Guam	\$0.24
Hawaii	\$0.10

The following per-minute rates for inbound toll free calling apply to all TelePacific Toll Free services.

Call Type	IntraLATA (CA)	Long Distance		Per-call Fee for Calls Originating from a Payphone
	IntraLATA Toll	IntraState	InterState	
Billing Increments	30/6	30/6	30/6	\$0.65
Per-Minute Rate	\$0.059	\$0.059	\$0.059	

Offshore Destinations	Rate
Billing Increments	30/6
Alaska	\$0.25
Canada	\$0.31
Hawaii	\$0.22
Puerto Rico	\$0.31
US Virgin Islands	\$0.31

Each fractional call is rounded to the next whole cent for billing. For every voice channel in which TelePacific is the pre-subscribed outbound long distance carrier, a \$4 monthly recurring fee for the Long Distance Access



Order: 262146-040714

City of Belmont, California



In addition to the Terms and Conditions to which Customer has agreed on the TAA, Customer and TelePacific agree to amend and modify the Terms and Conditions of the TAA as follows:



**ADDENDUM TO  
TELECOMMUNICATIONS ACCOUNT AGREEMENT  
(Ethernet Third Party ETF Pass-Through)**

This Addendum to Telecommunications Account Agreement ("Addendum") is made as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between U.S. TelePacific Corp., a California corporation, d/b/a TelePacific Communications, 515 S. Flower Street, 47<sup>th</sup> Floor, Los Angeles, CA 90071-2201 ("TelePacific") and \_\_\_\_\_, a \_\_\_\_\_, headquartered at \_\_\_\_\_ ("Customer").

This Addendum amends and modifies that certain Telecommunications Account Agreement between TelePacific and Customer signed by Customer on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, ("Agreement") for Services as follows:

1. Based on the volume of Services ordered by the Customer and the competitive conditions in the marketplace for telecommunications services, TelePacific shall provide Ethernet Services to Customer with modified Terms and Conditions as set forth below, based upon Customer's commitment to a \_\_\_\_ year ("Initial Term") contract for Ethernet Services and other fees and charges set forth in the Agreement, which is different from those Terms and Conditions used for those same Ethernet Services with others.

2. TelePacific and Customer agree that the Terms and Conditions applicable to the Agreement are hereby amended by adding new sub-section (b)(iii) after sub-section (b)(ii) in Section 4 as follows:

"(iii) Notwithstanding provisions to the contrary in sub-sections (b)(i) and (b)(ii) above, if we terminate this Agreement as a result of your material breach, or you terminate any Ethernet Services provided to you for any reason other than our material breach, we will pass through to you, and you shall pay, any and all termination charges in connection with termination of Services before the end of the term that are imposed on us by the provider of the underlying facilities."

3. Except as modified by this Addendum, the Terms & Conditions to the Agreement shall remain in full force and effect.

U.S. TelePacific Corp.,  
a California corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

#3 { By: \_\_\_\_\_

Name: Bill Mitchell

Title: IT Director

City of Belmont  
110 Sem lane, Belmont CA 94002



## Telecommunications Account Agreement

Must include Service Agreement

This Telecommunications Account Agreement (referred to as "Agreement" or "TAA") is made by and between U.S. TelePacific Corp., a California corporation, dba TelePacific Communications ("TelePacific", also referred to as "our, us, we"), having its principal place of business at 515 S. Flower Street, 47th Floor, Los Angeles, CA 90071-2201 and the Customer described below ("Customer" also referred to as "you, I"), pursuant to the TelePacific Terms and Conditions which are included in summary.

### Section 1 Company Information

Company Legal Name (Individual if Sole Proprietorship) City of Belmont, California

Doing Business As (DBA) \_\_\_\_\_

Legal Composition: ☐ Corporation ☐ Sole Proprietorship ☐ General Partnership ☐ LLP ☐ LLC State Organized: \_\_\_\_\_

Officer/Owner Name & Title \_\_\_\_\_

Officer/Owner Name & Title \_\_\_\_\_

Main Service Address: 110 SEM LN

City BELMONT State CA ZIP Code 94002

Billing Address (if different): One Twin Pines Suite 365

City Belmont State CA ZIP Code 94002

Customer's Email Address bmitchell@belmont.gov

### Section 2 Terms and Conditions Summary

This Agreement you are signing with TelePacific includes the Terms and Conditions set forth on our website at [www.insidetelepacific.com](http://www.insidetelepacific.com) (click on TERMS & CONDITIONS at the bottom of the page), which are incorporated by this reference into the Agreement. Please refer to our website for the full statement of the Terms and Conditions to which you are agreeing. The summary below is only a reference guide and is not meant to change any of the Terms and Conditions.

- 1. General** – This section defines the Services for which you are contracting, how the prices for those Services are determined, special conditions for rates and fees, such as expedite fees, how the rates, terms and conditions may be changed during the contract Term and any rights you have if those changes occur.
- 2. Term, Billing and Payment** - This section covers when the Agreement becomes effective, when the Term starts and renews, how additional Services, if any, are handled, how billing will occur and what is included, how a deposit may be required, what happens if you delay acceptance of the Services, when payment of Invoices is due, how Invoice disputes are handled, late payment fees, actions that may result from late payment or non-payment and the charge for returned checks.
- 3. Customer Obligations** – This section covers your responsibility for any of our property on your premises, for use of our Service and your message content, for compliance with our Acceptable Use Policy (which may change during the Term), for securing your own network against unauthorized use and access and that you have no right to rely on any oral or written statements of our employees contrary to the Customer Obligations Terms and Conditions. Also included is your responsibility to pay any 3<sup>rd</sup> party vendor charges and to arrange for disconnection and payment of charges related to the disconnection of any related services with your current carrier(s).
- 4. Termination** – This section states the rights and duties related to termination of Services or the Agreement, the renewal of the Term, the fees charged for cancellation of an order for Services before the commencement of a Term, how a "material breach" of the Agreement is handled, and whether a fee is incurred for termination of Services or the Agreement before the end of a Term and how it is calculated.

continued on page 2

## Section 2 Terms and Conditions Summary, continued

**5. Warranty, Disclaimer, Limitation of Liability and Indemnity** – This section limits your rights to impose liability for certain damages on us, disclaims certain implied representations and warranties, provides credit allowances under certain conditions for interruptions of Service and outages that you may claim, and defines your obligations, and ours, with regard to indemnity and defense of certain claims.

**6. Miscellaneous Provisions** – This section controls assignment and transfer of the Agreement and Services under it, the law applicable to the Agreement, an exclusion of liability for damages caused by us over which we have no control, how we resolve disputes under the Agreement, the exclusion of any understanding or other agreements from what is contained in the Agreement and its exhibits, and any changes not signed by both you and us, what happens if any provision of the Agreement is found to be invalid or unenforceable, whether the headings of the sections and paragraphs are part of the Agreement, the effect of non-enforcement of any provision of the Agreement, how we will give notice under the Agreement to each other, and a time limitation for the bringing of a legal action under the Agreement

**7. Service Guarantee** – This section provides you with an alternative to continuing with our Services under the Agreement under certain conditions.

## Section 3 Acceptance

#4 Initial BY PLACING YOUR INITIALS IN THE SPACE PROVIDED, YOU ACKNOWLEDGE THAT YOU HAVE REVIEWED AND AGREED TO THE FULL TERMS AND CONDITIONS SET FORTH AT [www.insidetelepacific.com](http://www.insidetelepacific.com) (click on TERMS & CONDITIONS at the bottom of the page), ON THE DATE ENTERED BY YOU BELOW.

#5 Initial BY PLACING YOUR INITIALS IN THE SPACE PROVIDED, YOU ACKNOWLEDGE THAT YOU HAVE REVIEWED AND AGREED TO THE GENERAL SERVICE LEVEL AGREEMENT (SLA) SET FORTH AT [www.insidetelepacific.com](http://www.insidetelepacific.com) (click on SERVICE LEVEL AGREEMENTS at the bottom of the page) ON THE DATE ENTERED BY YOU BELOW

#6 Initial BY PLACING YOUR INITIALS IN THE SPACE PROVIDED, YOU CONSENT TO RECEIVING ELECTRONIC COMMUNICATIONS FROM TELEPACIFIC VIA THE EMAIL ADDRESS PROVIDED IN SECTION 1

By signing below, the person signing on behalf of Customer personally represents and warrants to TelePacific that he or she has the authority and power to sign on behalf of Customer and bind Customer to this Agreement. TelePacific agrees to provide, and the Customer agrees to receive and pay for, those services at locations set forth on the Service Agreement (attached), including any services on subsequent Service Agreements and subsequent changes as long as those changes meet TelePacific's minimum requirements. THIS AGREEMENT INCLUDES AN ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES. This Agreement shall become a binding contract upon execution by Customer and acceptance by TelePacific.

#7

X

Agreed By, Customer Signature

Bill Mitchell

Customer Name (Print)

Kate Heard-Zerny

Sales Representative Name

Date

IT Director

Title

415-794-7708

Phone

X

Agreed By, Sales Manager Signature

Date



## Letter Of Agency

### 1. Customer and Carrier Identification

Current Carriers	<u>Utility Telcom</u>
Contact Name and Title	<u>Bill Mitchell - IT Director</u>
Company Legal Name (Customer)	<u>City of Belmont, California</u>
Service Address (Street/City/State/Zip)	<u>110 SEM LN - , BELMONT, CA 94002</u>
Billing Address (Street/City/State/Zip)	<u>One Twin Pines Suite 365 - , Belmont, CA 94002</u>
Other Company Names (DBA)	

### 2. Billing Telephone Numbers

This authorization covers all customer numbers associated with the Billing Telephone #s listed below:

--	--	--

### 3. Approval

☐ Customer Service Records

To: Current Carrier(s) Listed Above.

Subject: The Customer Identified above hereby authorizes TelePacific Communications to act as its agent in dealing with local companies listed above for the purpose of generating a proposal for TelePacific Communications

☒ Service Change

☐ New Service

I, the undersigned, act on behalf of the company with respect to the telephone number(s) listed above. I authorize TelePacific Communications to act as our agent either to (1) change our telecommunications carrier from current carrier(s) or (2) initiate new service.

☒ Local Service

☒ IntraLata Toll:

Carrier: \_\_\_\_\_

☒ InterLata Long Distance Service:

Carrier: \_\_\_\_\_

or

☐ I want to retain my existing LD carrier on some or all of my telephone numbers.

☐ Specify Intra and InterLata PIC for each telephone number on attachment.

I understand that only one telecommunications carrier may be designated as my primary interexchange carrier for any one telephone number for each (a) IntraLATA Toll and (b) InterLATA Long Distance services. I also understand that if I select no primary interexchange carrier (NO PIC), I will be unable to make IntraLATA Toll and/or InterLATA long distance calls except by using casual dialing. I understand that any change in my primary carrier selection may involve a charge.

### (4) Agreement

Contact Name

Title

Customer Signature

Date



## T-1 Card Service Addendum

This addendum (the "Addendum"), dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, amends the Telecommunications Account Agreement (the "TAA"), dated \_\_\_\_\_, 20\_\_\_\_, entered into by and between \_\_\_\_\_ ("Customer") and U.S. TelePacific Corp. ("TelePacific"). As amended by this Addendum, the TAA will remain in full force and effect. Capitalized terms used but not defined herein shall have the meaning given such terms in the TAA.

WHEREAS, Customer has entered into a TAA with TelePacific for a Digital T-1 transport service ("Service") at the rates and subject to the terms and conditions contained in the TAA. The Term of the TAA is set forth below in Section 2.

WHEREAS, in order for TelePacific to install the Service, Customer must purchase and install one or more Digital Trunk Interface card(s) ("T-1 Card(s)") to provide access to its customer premises equipment ("CPE") at a location acceptable to TelePacific and in order for Customer to be entitled to the Credit set forth below, Customer must have selected and must maintain TelePacific as Customer's Primary Interexchange Carrier ("PIC") for the entire Term of the TAA.

WHEREAS, TelePacific is willing to provide Customer with an equipment purchase credit ("Credit") to reimburse Customer, at least in part, for the cost of the T-1 Card (s) required for the interconnection of TelePacific's Service with Customer's CPE.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, TelePacific and Customer hereby agree as follows:

1. T-1 Connection. TelePacific will connect the Service to Customer's CPE at the Point of Demarcation. Customer shall connect or arrange for the interconnection (at Customer's sole expense) of the Service with Customer's T-1 Card(s).
2. Equipment Credit. TelePacific will reimburse Customer through the Credit for all or part of the cost of each T-1 Card purchased and installed in order to receive the Service. The total amount of the Credit, per card, shall be equal to the amount actually paid by Customer for the T-1 Card(s), excluding any and all costs of software, T-1 Card installation or programming, or other fees incurred by Customer in connection with the T-1 Card. Further, the Credit but shall not to exceed \$1,000.00. Credits will be applied to Customer's Invoice in twelve (12) equal monthly installments.

The maximum amount of the Credit available to Customer based on the T-1 Cards required and the term of the TAA is as follows:

Card Quantity	TAA Term
<u>1</u>	<u>3</u> Year(s)

TelePacific shall have no obligation to give Customer any part of the Credit until Customer provides, within 60 days after installation of the T-1 Card(s), documentation, acceptable to TelePacific, that proves Customer has purchased and accepted the T-1 Card(s) from Customer's vendor, including the original, unaltered, invoice from Customer's vendor with the vendor's name and address printed thereon, the T-1 Card pricing quotation showing the manufacturer and model number and a copy of the front of Customer's check to the vendor in payment of that invoice ("Proof"). Customer shall return to TelePacific the T-1 Card Rebate Checklist that TelePacific has provided along with the Proof.

3. Application of the Credit. TelePacific shall apply the Credit against the charges on Customer's monthly invoices beginning with the invoice for the next service billing cycle after activation and acceptance by Customer of the Service and receipt by TelePacific of the T-1 Card Rebate Checklist and Proof. The monthly Credit applied on any given invoice shall not exceed \$83.34 per T-1 Card. Customer shall not, under any circumstances, be entitled to receive cash in lieu of the Credit nor shall any Credit be applied toward any termination charges owed by Customer under the terms of the TAA. Customer shall not withhold any payments on TelePacific invoices in anticipation of the application of any Credit(s).



## T-1 Card Service Addendum

4. **Addendum Term.** This Addendum shall become effective on the date first set forth above and shall remain in effect for the term of the TAA unless terminated earlier pursuant to the terms of this Addendum or the TAA.
5. **Covenants of the Customer.** The Customer represents, warrants and covenants that:
- a) Customer will install, the T-1 Card(s), at its expense, within 60 days after the date of this Addendum and shall provide the T-1 Card Rebate Checklist and Proof within 60 days after installation
  - b) It shall constitute a material breach of this Addendum if Customer fails to pay its Equipment vendor for the T-1 card(s) and, if applicable, installation and programming prior to submitting the invoice to TelePacific. Customer may not assign its right to receive a Credit pursuant to this Addendum.
  - c) Customer, or its designee, shall manage and maintain all of its CPE. Customer agrees to look solely to its Equipment vendor if the T-1 Card(s) is defective or there was faulty installation and/or programming of the T-1 Card(s), and hereby agrees to defend, indemnify and hold harmless TelePacific, its officers, directors, affiliates, employees, agents and contractors from any claims or liability relating to Customer's purchase, installation, or programming of the T-1 Card(s) or Customer's inability to use the Service as the result of a defect in or the faulty installation or programming of the T-1 Card(s).
  - d) Customer acknowledges that TelePacific has no responsibility of any kind for the maintenance or repair of the CPE and Customer shall not be relieved of any of its obligations under this Addendum or the TAA to pay for the Service based on problems experienced with Customer's CPE.
6. **Termination; Repayment of the Credit.** If Customer terminates the TAA or fails to designate or maintain TelePacific as Customer's PIC prior to the expiration of the Term of the TAA for any reason other than a material breach by TelePacific of the TAA, Customer will, within thirty (30) days following such termination, repay TelePacific the full amount of the Credit provided to Customer pursuant to Section 2 hereof plus interest from the date the credit was given to Customer by TelePacific until the full amount of the credit is repaid at the lesser of (i) 1.5% per calendar month or any portion of a calendar month, or (ii) the maximum rate permitted by law.

CUSTOMER

U.S. TELEPACIFIC CORP.

#9 {  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Please submit a copy of your original T-1 Card(s) invoice along with the pricing quotation showing the manufacturer and model number of the T1 Card, the T1 Card Checklist and Proof of payment for Equipment credit directly to TelePacific Communications, T1 Card Promotion, 3300 N. Cimarron Road, Las Vegas, NV 89129 within 60 days after installation of the T-1 Card(s). For credit purposes, the envelope containing your checklist, the related invoice and Proof of payment must be postmarked within 60 days after installation of the T-1 Card(s).

Customer Equipment Vendor (T-1Card) name, address and phone number:

Xtelesis - Kevin Oogen  
650-239-1453



## T1 Card Reimbursement Program

Thank you for taking advantage of TelePacific's T1 Card Reimbursement Program. Your business is important to us and we will make every attempt to ensure that you are treated like the valued customer that you are.

Enclosed, please find

- T1 Card Program Checklist.

In order to ensure prompt payment, please send the following information to

**T1 Card Program Manager**  
Customer Care Department  
515 S. Flower Street, 47<sup>th</sup> Floor  
Los Angeles, CA 90071-2201

- Copy of original invoice from vendor
- Proof of payment to vendor for T1 Card
- Completed T1 Card Program Checklist

The above mentioned documentation must be postmarked no later than 30 days after installation of your service.

Should you have any questions, please do not hesitate to contact the T1 Card Program Department toll free at (877) 487-8722, option # 3.

Sincerely,

T1 Card Program Manager

Code: 1003T1/Letter





# T1 Card Program Checklist

Thank you once again for your business. When submitting your T1 Card Program Checklist, please make sure to include the following:

- ☐ Copy of original invoice received from Vendor
- ☐ Proof of payment to the Vendor for T1 Card
- ☐ Completed T1 Card Program Checklist

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Suite #

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip Code

\_\_\_\_\_  
Contact Name (please print)

\_\_\_\_\_  
Email Address

## For Internal Use Only

Amt to be Paid	
T1 Tracker Number	
Received Invoice Date	
Date sent to Revenue Assurance	

Code: 1003T1/Checklist



## Service Agreement

### Section 1 Customer Information

Account Number (existing acct) _____		
Company Legal Name (Individual if Sole Proprietorshi _____		City of Belmont, California
Doing Business As (DBA) _____		
Contact Name and Title <u>Bill Mitchell - IT Director</u>		
Telephone Number <u>650-637-2970</u>	Fax Number _____	Email <u>bmitchell@belmont.gov</u>
Service Address: <u>One Twin Pines Lane -</u>		
City <u>Belmont</u>	State <u>CA</u>	Zip <u>94002</u>

### Section 2 TelePacific Services

TelePacific will provide Customer with the specified type and amount of Services at the rates, and terms and conditions listed below, and Customer shall accept and pay for Services under the Terms and Conditions to which Customer agreed on the Telecommunications Account Agreement that governs this Service Agreement.

Description of Services	Account Term (Yrs)	QTY	Monthly Recurring Charge (MRC)	MRC Total	Set-up Charge (NRC)	NRC Total
CA Caller ID Name	3	1	\$9.50	\$9.50	\$115.00	\$115.00
DID Numbers (blocks of 20)	3	7	\$10.00	\$70.00	\$117.75	\$824.25
Trunk Group Call Forwarding within Switch	3	1	\$15.00	\$15.00	\$40.00	\$40.00
Voice Only PRI (P)	3	1	\$414.12	\$414.12	\$500.00	\$500.00
Install Discount	3	1	\$0.00	\$0.00	(\$739.63)	(\$739.63)
Trunk Max Promotion	3	1	(\$62.12)	(\$62.12)	\$0.00	\$0.00
Trunk Max Promotion - 20k Minute Bundles Per Trunk	3	1	\$280.00	\$280.00	\$0.00	\$0.00
Custom Bill Formatting	0	2	\$0.00	\$0.00	\$0.00	\$0.00
OneCentral	3	1	\$0.00	\$0.00	\$0.00	\$0.00
Double Dash: DID Numbers (up to 100 additional)	3	1	(\$50.00)	(\$50.00)	\$0.00	\$0.00
T1 Card Service Addendum	3	1	\$0.00	\$0.00	\$0.00	\$0.00
Standard Local and Long Distance Rates	3	1	\$0.00	\$0.00	\$0.00	\$0.00
T1 Card Credit	3	1	\$0.00	\$0.00	\$0.00	\$0.00

Sub Totals:	\$676.50	\$739.63
LDAC, EUCC and EUCL:	\$115.15	

Federal, State and Local Taxes and Other Charges will be applied in accordance with the definitions stated at <http://www.insidetelepacific.com/rates/rates-telepacific.asp>.



## Service Agreement

IN WITNESS WHEREOF each Party hereto has caused this Service Agreement to be executed by its duly authorized representative.

#1 (X)

Agreed By, Customer Signature

*Bill Mitchell*

Date

*IT Director*

Customer Name (Print)

*Late Heard - Zeryny*

Title

*415-794-7708*

Sales Representative Name

Phone

X

Agreed By, Sales Manager Signature

Date



## Service Agreement

### Section 1 Customer Information

Account Number (existing acct)			
Company Legal Name (Individual if Sole Proprietorshi		City of Belmont, California	
Doing Business As (DBA)			
Contact Name and Title Bill Mitchell - IT Director			
Telephone Number	650-637-2970	Fax Number	Email bmittchell@belmont.gov
Service Address: One Twin Pines Lane -			
City	Belmont	State	CA Zip 94002

### Section 2 TelePacific Services

TelePacific will provide Customer with the specified type and amount of Services at the rates, and terms and conditions listed below, and Customer shall accept and pay for Services under the Terms and Conditions to which Customer agreed on the Telecommunications Account Agreement that governs this Service Agreement.

Description of Services	Account Term (Yrs)	QTY	Monthly Recurring Charge (MRC)	MRC Total	Set-up Charge (NRC)	NRC Total
CA Caller ID Name	3	1	\$9.50	\$9.50	\$115.00	\$115.00
Trunk Group Call Forwarding within Switch	3	1	\$15.00	\$15.00	\$40.00	\$40.00
Voice Only PRI (P)	3	1	\$414.12	\$414.12	\$500.00	\$500.00
Install Discount	3	1	\$0.00	\$0.00	(\$327.50)	(\$327.50)
Custom Bill Formatting	0	2	\$0.00	\$0.00	\$0.00	\$0.00
OneCentral	3	1	\$0.00	\$0.00	\$0.00	\$0.00
Standard Local and Long Distance Rates	3	1	\$0.00	\$0.00	\$0.00	\$0.00

Sub Totals:	\$438.62	\$327.50
LDAC, EUCC and EUCL:	\$115.15	

Federal, State and Local Taxes and Other Charges will be applied in accordance with the definitions stated at <http://www.insidetelepacific.com/rates/rates-telepacific.asp>.

IN WITNESS WHEREOF each Party hereto has caused this Service Agreement to be executed by its duly authorized representative.

#2 (X)

Agreed By, Customer Signature

Bill Mitchell

Customer Name (Print)

Date

IT Director

Title



**Service Agreement**

Late Heard - Tony  
Sales Representative Name

415-794-7708  
Phone

X \_\_\_\_\_  
Agreed By, Sales Manager Signature

\_\_\_\_\_  
Date

Order: 262142-040714



**City of Belmont, California**

In addition to the Terms and Conditions to which Customer has agreed on the TAA, Customer and TelePacific agree to amend and modify the Terms and Conditions of the TAA as follows:

**TelePacific Local & Long Distance Calling**

The following per-minute rates for domestic outbound local and long distance calling apply to all TelePacific provisioned voice services.

Call Type	Local (CA)		IntraLATA (CA)	Long Distance	
	Zone 1& 2	Zone 3	IntraLATA Toll	IntraState	InterState
Billing Increments	60/6	60/6	30/6	30/6	30/6
First Minute	\$0.0700	\$0.0700	\$0.059	\$0.059	\$0.059
Additional Minute	\$0.0350	\$0.0350			

Other InterState	Rate
Billing Increments	30/6
Alaska	\$0.11
Guam	\$0.24
Hawaii	\$0.10

The following per-minute rates for domestic outbound long distance calling apply to all non-TelePacific provisioned voice services associated with TelePacific's Switched Long Distance service.

Call Type	IntraLATA (CA)	Long Distance	
	IntraLATA Toll	IntraState	InterState
Billing Increments	30/6	30/6	30/6
Per-Minute Rate	\$0.059	\$0.059	\$0.059

Other InterState	Rate
Billing Increments	30/6
Alaska	\$0.11
Guam	\$0.24
Hawaii	\$0.10

The following per-minute rates for inbound toll free calling apply to all TelePacific Toll Free services.

Call Type	IntraLATA (CA)	Long Distance		Per-call Fee for Calls Originating from a Payphone
	IntraLATA Toll	IntraState	InterState	
Billing Increments	30/6	30/6	30/6	\$0.65
Per-Minute Rate	\$0.059	\$0.059	\$0.059	

Offshore Destinations	Rate
Billing Increments	30/6
Alaska	\$0.25
Canada	\$0.31
Hawaii	\$0.22
Puerto Rico	\$0.31
US Virgin Islands	\$0.31

Each fractional call is rounded to the next whole cent for billing. For every voice channel in which TelePacific is the pre-subscribed outbound long distance carrier, a \$4 monthly recurring fee for the Long Distance Access

**Order: 262143-040714**

**City of Belmont, California**



In addition to the Terms and Conditions to which Customer has agreed on the TAA, Customer and TelePacific agree to amend and modify the Terms and Conditions of the TAA as follows:



## Telecommunications Account Agreement

Must include Service Agreement

This Telecommunications Account Agreement (referred to as "Agreement" or "TAA") is made by and between U.S. TelePacific Corp., a California corporation, dba TelePacific Communications ("TelePacific", also referred to as "our, us, we"), having its principal place of business at 515 S. Flower Street, 47th Floor, Los Angeles, CA 90071-2201 and the Customer described below ("Customer" also referred to as "you, I"), pursuant to the TelePacific Terms and Conditions which are included in summary.

### Section 1 Company Information

Company Legal Name (Individual if Sole Proprietorship) City of Belmont, California

Doing Business As (DBA) \_\_\_\_\_

Legal Composition: ☐ Corporation ☐ Sole Proprietorship ☐ General Partnership ☐ LLP ☐ LLC State Organized: \_\_\_\_\_

Officer/Owner Name & Title \_\_\_\_\_

Officer/Owner Name & Title \_\_\_\_\_

Main Service Address: One Twin Pines Lane

City Belmont State CA ZIP Code 94002

Billing Address (if different): One Twin Pines Lane Suite 365

City Belmont State CA ZIP Code 94002

Customer's Email Address bmitchell@belmont.gov

### Section 2 Terms and Conditions Summary

This Agreement you are signing with TelePacific includes the Terms and Conditions set forth on our website at [www.insidetelepacific.com](http://www.insidetelepacific.com) (click on TERMS & CONDITIONS at the bottom of the page), which are incorporated by this reference into the Agreement. Please refer to our website for the full statement of the Terms and Conditions to which you are agreeing. The summary below is only a reference guide and is not meant to change any of the Terms and Conditions.

**1. General** – This section defines the Services for which you are contracting, how the prices for those Services are determined, special conditions for rates and fees, such as expedite fees, how the rates, terms and conditions may be changed during the contract Term and any rights you have if those changes occur.

**2. Term, Billing and Payment** - This section covers when the Agreement becomes effective, when the Term starts and renews, how additional Services, if any, are handled, how billing will occur and what is included, how a deposit may be required, what happens if you delay acceptance of the Services, when payment of Invoices is due, how Invoice disputes are handled, late payment fees, actions that may result from late payment or non-payment and the charge for returned checks.

**3. Customer Obligations** – This section covers your responsibility for any of our property on your premises, for use of our Service and your message content, for compliance with our Acceptable Use Policy (which may change during the Term), for securing your own network against unauthorized use and access and that you have no right to rely on any oral or written statements of our employees contrary to the Customer Obligations Terms and Conditions. Also included is your responsibility to pay any 3<sup>rd</sup> party vendor charges and to arrange for disconnection and payment of charges related to the disconnection of any related services with your current carrier(s).

**4. Termination** – This section states the rights and duties related to termination of Services or the Agreement, the renewal of the Term, the fees charged for cancellation of an order for Services before the commencement of a Term, how a "material breach" of the Agreement is handled, and whether a fee is incurred for termination of Services or the Agreement before the end of a Term and how it is calculated.

continued on page 2



## Section 2 Terms and Conditions Summary, continued

**5. Warranty, Disclaimer, Limitation of Liability and Indemnity** – This section limits your rights to impose liability for certain damages on us, disclaims certain implied representations and warranties, provides credit allowances under certain conditions for interruptions of Service and outages that you may claim, and defines your obligations, and ours, with regard to indemnity and defense of certain claims.

**6. Miscellaneous Provisions** – This section controls assignment and transfer of the Agreement and Services under it, the law applicable to the Agreement, an exclusion of liability for damages caused by us over which we have no control, how we resolve disputes under the Agreement, the exclusion of any understanding or other agreements from what is contained in the Agreement and its exhibits, and any changes not signed by both you and us, what happens if any provision of the Agreement is found to be invalid or unenforceable, whether the headings of the sections and paragraphs are part of the Agreement, the effect of non-enforcement of any provision of the Agreement, how we will give notice under the Agreement to each other, and a time limitation for the bringing of a legal action under the Agreement

**7. Service Guarantee** – This section provides you with an alternative to continuing with our Services under the Agreement under certain conditions.

## Section 3 Acceptance

#4 →  BY PLACING YOUR INITIALS IN THE SPACE PROVIDED, YOU ACKNOWLEDGE THAT YOU HAVE REVIEWED AND AGREED TO THE FULL TERMS AND CONDITIONS SET FORTH AT [www.insidetelepacific.com](http://www.insidetelepacific.com) (click on TERMS & CONDITIONS at the bottom of the page), ON THE DATE ENTERED BY YOU BELOW.

#5 →  BY PLACING YOUR INITIALS IN THE SPACE PROVIDED, YOU ACKNOWLEDGE THAT YOU HAVE REVIEWED AND AGREED TO THE GENERAL SERVICE LEVEL AGREEMENT (SLA) SET FORTH AT [www.insidetelepacific.com](http://www.insidetelepacific.com) (click on SERVICE LEVEL AGREEMENTS at the bottom of the page) ON THE DATE ENTERED BY YOU BELOW

#6 →  BY PLACING YOUR INITIALS IN THE SPACE PROVIDED, YOU CONSENT TO RECEIVING ELECTRONIC COMMUNICATIONS FROM TELEPACIFIC VIA THE EMAIL ADDRESS PROVIDED IN SECTION 1

By signing below, the person signing on behalf of Customer personally represents and warrants to TelePacific that he or she has the authority and power to sign on behalf of Customer and bind Customer to this Agreement. TelePacific agrees to provide, and the Customer agrees to receive and pay for, those services at locations set forth on the Service Agreement (attached), including any services on subsequent Service Agreements and subsequent changes as long as those changes meet TelePacific's minimum requirements. THIS AGREEMENT INCLUDES AN ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES. This Agreement shall become a binding contract upon execution by Customer and acceptance by TelePacific.

#7 (X) \_\_\_\_\_  
Agreed By, Customer Signature

\_\_\_\_\_ Date

Bill Mitchell  
Customer Name (Print)

IT Director  
Title

Kate Heard - Zeryny  
Sales Representative Name

415-794-7708  
Phone

X \_\_\_\_\_

Agreed By, Sales Manager Signature

\_\_\_\_\_ Date



## Letter Of Agency

### 1. Customer and Carrier Identification

Current Carriers Utility Telcom

Contact Name and Title Bill Mitchell - IT Director

Company Legal Name (Customer City of Belmont, California

Service Address (Street/City/State/Zip) One Twin Pines Lane - , Belmont, CA 94002

Billing Address (Street/City/State/Zip) One Twin Pines Lane - , Belmont, CA 94002

Other Company Names (DBA) \_\_\_\_\_

### 2. Billing Telephone Numbers

This authorization covers all customer numbers associated with the Billing Telephone #s listed below:


### 3. Approval

☐ Customer Service Records

To: Current Carrier(s) Listed Above.

Subject: The Customer Identified above hereby authorizes TelePacific Communications to act as its agent in dealing with local companies listed above for the purpose of generating a proposal for TelePacific Communications

☒ Service Change

☐ New Service

I, the undersigned, act on behalf of the company with respect to the telephone number(s) listed above. I authorize TelePacific Communications to act as our agent either to (1) change our telecommunications carrier from current carrier(s) or (2) initiate new service.

☒ Local Service

☒ IntraLata Toll:

Carrier: \_\_\_\_\_

☒ InterLata Long Distance Service:

Carrier: \_\_\_\_\_

or

☐ I want to retain my existing LD carrier on some or all of my telephone numbers.

☐ Specify Intra and InterLata PIC for each telephone number on attachment.

I understand that only one telecommunications carrier may be designated as my primary interexchange carrier for any one telephone number for each (a) IntraLATA Toll and (b) InterLATA Long Distance services. I also understand that if I select no primary interexchange carrier (NO PIC), I will be unable to make IntraLATA Toll and/or InterLATA long distance calls except by using casual dialing. I understand that any change in my primary carrier selection may involve a charge.

### (4) Agreement

Contact Name

Title

Customer Signature

Date



#9

## Application for Credit

Please complete all sections completely and legibly. Incomplete applications can not be processed.

The information below is warranted to be true and correct by the below named Customer and is given for the purpose of obtaining credit from TelePacific. Customer authorizes TelePacific to conduct a routine credit check in connection with its application for service. TelePacific will keep such information confidential and only use it for the purpose of evaluating Customer's credit in connection with Customer's application for service. This application for credit shall be construed in accordance with the laws of the State of California.

### Section 1 Customer Information (please complete all sections completely and legibly)

Company Legal Name (Customer) City of Belmont, California

Doing Business As (DBA) \_\_\_\_\_

Legal Composition: ☐ Corporation ☐ Sole Proprietorship ☐ General Partnership ☐ LLP ☐ LLC State Organized: \_\_\_\_\_

☒ Federal Tax I.D. \_\_\_\_\_ Exempt? (circle) No Yes

Business Type: \_\_\_\_\_

State Tax Info: Tax Exempt# \_\_\_\_\_

Dun & Bradstreet # (D&B) \_\_\_\_\_

Process as Personal Guarantee ☐ (Mark if Applicable)

Officer/Owner Name & Title \_\_\_\_\_ Social Security # \_\_\_\_\_

Officer/Owner Name & Title \_\_\_\_\_ Social Security # \_\_\_\_\_

Current Carrier Reference: Carrier Name \_\_\_\_\_

Account #: \_\_\_\_\_ Phone #: \_\_\_\_\_ Length of Service: \_\_\_\_\_

Estimated Monthly Long Distance Usage \_\_\_\_\_ Estimated International Usage \_\_\_\_\_ International Block? (circle) No Yes

Main Service Address: One Twin Pines Lane

City Belmont State CA ZIP Code 94002

Billing Address (if different): One Twin Pines Lane

City Belmont State CA ZIP Code 94002



Agreed By, Customer Signature

Date

Bill Mitchell

IT Director

Customer Name (Print)

Title

Sales Representative Name

4157947708

Phone



#10

## Customer Contact Authority

TelePacific is committed to protecting the proprietary information (CPNI) you have entrusted to us. Pursuant to FCC rules, effective 12/8/2007, we have implemented policies and procedures designed to better protect your network information against unauthorized access. Please assist us by providing complete contact information for parties authorized to receive information regarding your account.

"I grant permission to TelePacific to provide information to the following individuals for the purpose of servicing my telecommunications account, including: the review of network, service, and billing records; negotiation of service changes; and resolution of network and billing issues that may arise on my account. Identified below are authorized account contacts and their respective authority level for each organizational area within my company."

Account Number:

New Account #

Printed Name:

Bill Mitchell

Title:

IT Director

Date:



Authorized Signature:

## Authority Levels:

**R/W/A: (Read/Write/All)** This contact has full authority to request information and place orders on all aspects of the account including bill usage and network configuration.

**R/W/B: (Read/Write/Bill)** This contact has the authority to ask questions about billing issues and request bill related changes on the account such as the billing address.

**R/W/O: (Read/Write/Orders)** This contact can receive information about the network configuration on an account including line type, count, and physical and data configuration. This contact is authorized to place orders on the account including reconfigures, moves, adds, changes, new locations, etc.

**R/O: (Read/Only)** This type of contact is allowed to request and receive information regarding bills, network configuration, and orders, but is not authorized to make changes on accounts or orders.

**R/T: (Read/Trouble)** This authority level is allowed to report trouble on accounts, receive network configuration information in support of resolving trouble on the account.

Note: TelePacific may send emails to inform customers of other related services and other information. TelePacific does not sell personal information and personal information is not given to a third party unless authorized by the customer in writing or required pursuant to contracts authorized by law.

## ACCOUNT CONTACTS:

PRIMARY ACCOUNT AUTHORITY/ AUTHORIZED SIGNEE		<input type="checkbox"/> Do not send marketing email
Name	Bill Mitchell	Title IT Director
Phone	6506372970	Cell
Email	bmitchell@belmont.gov	Fax
Auth Level	<input checked="" type="radio"/> RWA <input type="radio"/> RWB <input type="radio"/> RWO <input type="radio"/> RO <input type="radio"/> RT	(circle appropriate authorization level)

ALTERNATE PRIMARY ACCOUNT AUTHORITY		<input type="checkbox"/> Do not send marketing email
Name		Title
Phone		Cell
Email		Fax
Auth Level	<input type="radio"/> RWA <input type="radio"/> RWB <input type="radio"/> RWO <input type="radio"/> RO <input type="radio"/> RT	(circle appropriate authorization level)

ACCOUNT BILLING CONTACT		<input type="checkbox"/> Do not send marketing email
Name	Bill Mitchell	Title IT Director
Phone	6506372970	Cell
Email	bmitchell@belmont.gov	Fax
Auth Level	<input type="radio"/> RWA <input type="radio"/> RWB <input type="radio"/> RWO <input type="radio"/> RO <input type="radio"/> RT	(circle appropriate authorization level)

<b>ONECENTRAL CONTACT</b>		<input checked="" type="checkbox"/> Do not send marketing email
Name	Bill Mitchell	Title
Phone	6506372970	Cell
Email	bmitchell@belmont.gov	Fax
Auth Level	RWA RWB RWO RO RT	(circle appropriate authorization level)

<b>MAIN TECHNICAL CONTACT</b>		<input checked="" type="checkbox"/> Do not send marketing email
Name	Bill Mitchell	Title <b>IT Director</b>
Phone	6506372970	Cell
Email	bmitchell@belmont.gov	Fax
Auth Level	RWA RWB RWO RO RT	(circle appropriate authorization level)

<b>ALTERNATE TECHNICAL CONTACT</b>		<input type="checkbox"/> Do not send marketing email
Name		Title
Phone		Cell
Email		Fax
Auth Level	RWA RWB RWO RO RT	(circle appropriate authorization level)

<b>MAIN DATA CONTACT/LAN ADMINISTRATOR</b>		<input type="checkbox"/> Do not send marketing email
Name	Bill Mitchell	Title <b>IT Director</b>
Phone	6506372970	Cell
Email	bmitchell@belmont.gov	Fax
Auth Level	RWA RWB RWO RO RT	(circle appropriate authorization level)

**ORDER CONTACTS:**

<b>PRIMARY ORDER PROVISIONING CONTACT</b>		<input checked="" type="checkbox"/> Same as Main Tech Cont <input type="checkbox"/> Do not send marketing email
Name	Bill Mitchell	Title <b>IT Director</b>
Phone	6506372970	Cell
Email	bmitchell@belmont.gov	Fax
Auth Level	RWA RWB RWO RO RT	(circle appropriate authorization level)

<b>ALTERNATE ORDER PROVISIONING CONTACT</b>		<input type="checkbox"/> Do not send marketing email
Name		Title
Phone		Cell
Email		Fax
Auth Level	RWA RWB RWO RO RT	(circle appropriate authorization level)

<b>AFTER HOURS CONTACT</b>		<input type="checkbox"/> Do not send marketing email
Name		Title
Phone		Cell
Email		Fax
Auth Level	RWA RWB RWO RO RT	(circle appropriate authorization level)

Mail: TelePacific Communications, Attn: Customer Care, 3485 Brookside Dr. Suite 102, Stockton, CA 95219  
 Email: Scan signed documents and send to: [customerservice@telepacific.net](mailto:customerservice@telepacific.net) Fax: 866-891-2088 Initial \_\_\_\_\_



## T-1 Card Service Addendum

This addendum (the "Addendum"), dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, amends the Telecommunications Account Agreement (the "TAA"), dated \_\_\_\_\_, 20\_\_\_\_, entered into by and between \_\_\_\_\_ ("Customer") and U.S. TelePacific Corp. ("TelePacific"). As amended by this Addendum, the TAA will remain in full force and effect. Capitalized terms used but not defined herein shall have the meaning given such terms in the TAA.

WHEREAS, Customer has entered into a TAA with TelePacific for a Digital T-1 transport service ("Service") at the rates and subject to the terms and conditions contained in the TAA. The Term of the TAA is set forth below in Section 2.

WHEREAS, in order for TelePacific to install the Service, Customer must purchase and install one or more Digital Trunk Interface card(s) ("T-1 Card(s)") to provide access to its customer premises equipment ("CPE") at a location acceptable to TelePacific and in order for Customer to be entitled to the Credit set forth below, Customer must have selected and must maintain TelePacific as Customer's Primary Interexchange Carrier ("PIC") for the entire Term of the TAA.

WHEREAS, TelePacific is willing to provide Customer with an equipment purchase credit ("Credit") to reimburse Customer, at least in part, for the cost of the T-1 Card (s) required for the interconnection of TelePacific's Service with Customer's CPE.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, TelePacific and Customer hereby agree as follows:

1. T-1 Connection. TelePacific will connect the Service to Customer's CPE at the Point of Demarcation. Customer shall connect or arrange for the interconnection (at Customer's sole expense) of the Service with Customer's T-1 Card(s).
2. Equipment Credit. TelePacific will reimburse Customer through the Credit for all or part of the cost of each T-1 Card purchased and installed in order to receive the Service. The total amount of the Credit, per card, shall be equal to the amount actually paid by Customer for the T-1 Card(s), excluding any and all costs of software, T-1 Card installation or programming, or other fees incurred by Customer in connection with the T-1 Card. Further, the Credit but shall not to exceed \$1,000.00. Credits will be applied to Customer's Invoice in twelve (12) equal monthly installments.

The maximum amount of the Credit available to Customer based on the T-1 Cards required and the term of the TAA is as follows:

Card Quantity	TAA Term
<u>1</u>	<u>3</u> Year(s)

TelePacific shall have no obligation to give Customer any part of the Credit until Customer provides, within 60 days after installation of the T-1 Card(s), documentation, acceptable to TelePacific, that proves Customer has purchased and accepted the T-1 Card(s) from Customer's vendor, including the original, unaltered, invoice from Customer's vendor with the vendor's name and address printed thereon, the T-1 Card pricing quotation showing the manufacturer and model number and a copy of the front of Customer's check to the vendor in payment of that invoice ("Proof"). Customer shall return to TelePacific the T-1 Card Rebate Checklist that TelePacific has provided along with the Proof.

3. Application of the Credit. TelePacific shall apply the Credit against the charges on Customer's monthly invoices beginning with the invoice for the next service billing cycle after activation and acceptance by Customer of the Service and receipt by TelePacific of the T-1 Card Rebate Checklist and Proof. The monthly Credit applied on any given invoice shall not exceed \$83.34 per T-1 Card. Customer shall not, under any circumstances, be entitled to receive cash in lieu of the Credit nor shall any Credit be applied toward any termination charges owed by Customer under the terms of the TAA. Customer shall not withhold any payments on TelePacific invoices in anticipation of the application of any Credit(s).



## T-1 Card Service Addendum

4. Addendum Term. This Addendum shall become effective on the date first set forth above and shall remain in effect for the term of the TAA unless terminated earlier pursuant to the terms of this Addendum or the TAA.
5. Covenants of the Customer. The Customer represents, warrants and covenants that:
- a) Customer will install, the T-1 Card(s), at its expense, within 60 days after the date of this Addendum and shall provide the T-1 Card Rebate Checklist and Proof within 60 days after installation
  - b) It shall constitute a material breach of this Addendum if Customer fails to pay its Equipment vendor for the T-1 card(s) and, if applicable, installation and programming prior to submitting the invoice to TelePacific. Customer may not assign its right to receive a Credit pursuant to this Addendum.
  - c) Customer, or its designee, shall manage and maintain all of its CPE. Customer agrees to look solely to its Equipment vendor if the T-1 Card(s) is defective or there was faulty installation and/or programming of the T-1 Card(s), and hereby agrees to defend, indemnify and hold harmless TelePacific, its officers, directors, affiliates, employees, agents and contractors from any claims or liability relating to Customer's purchase, installation, or programming of the T-1 Card(s) or Customer's inability to use the Service as the result of a defect in or the faulty installation or programming of the T-1 Card(s).
  - d) Customer acknowledges that TelePacific has no responsibility of any kind for the maintenance or repair of the CPE and Customer shall not be relieved of any of its obligations under this Addendum or the TAA to pay for the Service based on problems experienced with Customer's CPE.
6. Termination; Repayment of the Credit. If Customer terminates the TAA or fails to designate or maintain TelePacific as Customer's PIC prior to the expiration of the Term of the TAA for any reason other than a material breach by TelePacific of the TAA, Customer will, within thirty (30) days following such termination, repay TelePacific the full amount of the Credit provided to Customer pursuant to Section 2 hereof plus interest from the date the credit was given to Customer by TelePacific until the full amount of the credit is repaid at the lesser of (i) 1.5% per calendar month or any portion of a calendar month, or (ii) the maximum rate permitted by law.

CUSTOMER

U.S. TELEPACIFIC CORP.

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Please submit a copy of your original T-1 Card(s) invoice along with the pricing quotation showing the manufacturer and model number of the T1 Card, the T1 Card Checklist and Proof of payment for Equipment credit directly to TelePacific Communications, T1 Card Promotion, 3300 N. Cimarron Road, Las Vegas, NV 89129 within 60 days after installation of the T-1 Card(s). For credit purposes, the envelope containing your checklist, the related invoice and Proof of payment must be postmarked within 60 days after installation of the T-1 Card(s).

Customer Equipment Vendor (T-1Card) name, address and phone number:

Xtelasis - Kevin Dyer  
650-239-1453



## T1 Card Reimbursement Program

Thank you for taking advantage of TelePacific's T1 Card Reimbursement Program. Your business is important to us and we will make every attempt to ensure that you are treated like the valued customer that you are.

Enclosed, please find

- T1 Card Program Checklist.

In order to ensure prompt payment, please send the following information to

**T1 Card Program Manager**  
Customer Care Department  
515 S. Flower Street, 47<sup>th</sup> Floor  
Los Angeles, CA 90071-2201

- Copy of original invoice from vendor
- Proof of payment to vendor for T1 Card
- Completed T1 Card Program Checklist

The above mentioned documentation must be postmarked no later than 30 days after installation of your service.

Should you have any questions, please do not hesitate to contact the T1 Card Program Department toll free at (877) 487-8722, option # 3.

Sincerely,

T1 Card Program Manager

*Fax docs to:  
When Install is completed  
and Bill has been  
paid*

Code: 1003T1/Letter





# T1 Card Program Checklist

Thank you once again for your business. When submitting your T1 Card Program Checklist, please make sure to include the following:

- ☐ Copy of original invoice received from Vendor
- ☐ Proof of payment to the Vendor for T1 Card
- ☐ Completed T1 Card Program Checklist

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Suite #

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip Code

\_\_\_\_\_  
Contact Name (please print)

\_\_\_\_\_  
Email Address

## For Internal Use Only

Amt to be Paid	
T1 Tracker Number	
Received Invoice Date	
Date sent to Revenue Assurance	

Code: 1003T1/Checklist



## 1. General

(a) These Terms and Conditions are part of the Telecommunications Account Agreement (referred to as "Agreement") between Customer (referred to as "you" and "your") and U.S. TelePacific Corp. and/or its affiliated companies (collectively referred to as "we", "us" and "our"). Services are offered to you by us either under Tariffs (documents which list services, prices and other terms and conditions) filed with the Federal Communications Commission (FCC) and state regulatory agencies having jurisdiction over the Services ("Tariffed Services"), or on a non-Tariffed basis. Tariffs are available online at [www.insidetelepacific.com](http://www.insidetelepacific.com). All services provided under this Agreement are collectively referred to as the "Services." In the event that the rates, terms and conditions in this Agreement conflict at any time with those set forth in our federal and/or state Tariffs applicable to the Services, the rates, terms and conditions of the Tariffs shall control. The rates, terms and conditions of Tariffed Services may change, subject to the approval of the applicable regulatory agency. If the Tariffs for any Services are cancelled as a result of regulatory action during the term of this Agreement, we will publish a Price List and related terms and conditions on our website ([www.insidetelepacific.com](http://www.insidetelepacific.com)) which will become part of this Agreement.

(b) We may increase the rates in this Agreement for non-Tariffed Services to pass through any price increases imposed on us by the providers of the underlying facilities used to provide the Services or, in the case of long distance services, by our wholesale providers of such services. We may also change the rates, terms and conditions applicable to non-Tariffed Services ("Revisions") by giving you at least thirty (30) days prior written notice and posting such Revisions to our website at [www.insidetelepacific.com](http://www.insidetelepacific.com). You will receive notice of the Revisions in your monthly invoice at least thirty (30) days prior to the effective date of any change. You shall then have thirty (30) calendar days from the date of the aforementioned invoice to provide us with written notice that the Revisions to changed terms or conditions adversely affect your use of the Service(s). If after said notice, we are able to verify such adverse effect and are able to eliminate said adverse effect, we shall provide you with a written addendum to this Agreement to confirm your assent to our elimination of the adverse effect on your Service(s). However, if we are unable reasonably to eliminate the Revision's impact on such Service(s), we will send you written notice of our inability to reasonably eliminate the Revision's impact, and then you may terminate the impacted Service(s) without further obligation to us beyond the termination date, including termination charges, if any. This shall be your sole and exclusive remedy for changed terms or conditions. If you do not notify us in writing of your election to terminate the affected Service(s) for changed terms or conditions within five (5) business days after receipt of written notice of our inability to reasonably eliminate the Revision's impact, you will be deemed to have consented to the changes and to a continuation of the Service(s), subject to the Revisions. If we materially increase the rates applicable to any of our non-tariffed Services, except for pass-through rate increases, you may terminate the affected Service(s) without further obligation beyond the termination date, including termination charges, if any, provided you notify us in writing before the effective date of the rate increase. If you do not notify us in writing of your election to terminate the affected Service(s) for increase in rates prior to the effective date of the rate increase, you will be deemed to have consented to the changes and to a continuation of the Service(s) subject to the Revisions.

(c) Under certain conditions, you may request that installation of Services be expedited by agreeing to pay an Expedite Fee. No projected date for expedited installation is guaranteed. Payment of the Expedite Fee only earns an advanced priority for your installation process and installation is not entirely in our control. No credit or refund of the Expedite Fee will be made for delay of the installation date beyond the projected or requested date. A list of Expedite Fees and other charges for Changes to Services ordered are available at: [www.insidetelepacific.com](http://www.insidetelepacific.com).

(d) We reserve the right to provide Services to you via our choice of technology and to change the manner in which we deliver Services at any time in our sole discretion provided the functionality of the Service provided remains substantially unaffected by the change.

**2. Term, Billing, and Payment**

(a) **Effective Date.** This Agreement is effective when it has been signed by you and accepted by TelePacific either by execution on behalf of TelePacific or by TelePacific commencing the Services delivery process. Upon approval, we will begin as soon as practicable the installation, connection and testing of the circuits and/or equipment necessary to provide the Services.

(b) **Term.** The initial term of this Agreement ("Initial Term") will begin the date we provide notice to you that the Services are available for your use. This Agreement will continue in effect for the entire Term chosen on the Service Agreement and for any subsequent Renewal Term. The Initial Term or Renewal Term (also referred to herein and on the Service Agreement as "Service Term") will automatically renew for successive Renewal Terms ("Automatic Renewal Term") of one (1) year each thereafter, unless terminated as provided in Section 4 of this Agreement. However, you may renew Services for a Renewal Term prior to the completion of the Initial Term. The beginning of this Non-Automatic Renewal Term is the date of the first invoice after the Service Renewal is entered into our billing system. You may order additional services at your existing Service Location(s) under this Agreement for which Service(s) shall have an Initial Term coterminous with the Initial or Renewal Term of the existing Service(s) at said Service Location, subject to our acceptance. Services for additional Service Locations may also be ordered, subject to our acceptance, under this Agreement. The Initial Term for additional Services ordered for additional Service Locations will begin the date we provide notice to you that the services are available for your use, will continue in effect for the entire Term specified on the Service Agreement for the additional Services and shall automatically renew for successive periods of one (1) year each after the end of the Initial Term of the additional Services (each successive period being a Renewal Term for those additional Services), unless terminated as provided in Section 4 of this Agreement. The Terms and Conditions of this Agreement shall extend automatically, following termination, to cover the remaining Term of any Services provided. See Section 4 of this Agreement for additional terms and conditions applicable to terminations and Renewal Terms, including the rates during Renewal Terms.

(c) **Billing.** We will begin invoicing you for the Services and other charges after giving you notice that the Services are installed and available for your use and will continue invoicing you on a monthly basis until the Agreement is terminated. We will bill monthly recurring charges in advance and usage charges after the usage occurs. You are responsible for all Other Charges and Government Fees and Taxes which will be separately listed on each invoice. We may require, in our sole discretion, that you provide a deposit or other assurance of payment before the Services are provided and/or thereafter. Any required deposit shall not bear interest unless required by law. If you delay acceptance of the Services after receiving notice that Services are available, we may, in our sole discretion, begin invoicing you for the ordered Services. If you continue to delay acceptance of the Services for more than 60 days after the date the Services are available, you will have materially breached this Agreement, and we will be entitled to terminate this Agreement without further notice and to pursue the remedies in Section 4 of this Agreement.

(d) **Back-billing.** We will endeavor to bill you for charges on a timely basis. However, unless proscribed by state regulation, you shall nevertheless be liable for all charges irrespective of any delay in billing, whether due to error, lack of necessary data, negligence or any other reason. No such delay shall constitute a basis for a claim of waiver, estoppel or other excuse of your obligation to pay our charges, irrespective of the length of the delay. Nothing herein shall toll the running of any statute of limitations applicable to such obligations.

(e) **Payment.** Invoices are due and payable upon presentation, and become past due after the Pay By Date printed on the invoice. If you have a bona fide dispute with any of the amounts on the invoice ("Disputed Amount"), you shall pay all amounts not in dispute by the Pay By Date and provide us with a written request for a billing adjustment, together with all supporting documentation, within 45 days after the Pay By Date or your right to any billing adjustment shall be waived. If we agree to adjust all or a portion of the Disputed Amount, you will not be obligated to pay a late payment charge on the adjusted amount. If you fail to pay all non-Disputed charges on our invoice by the Pay By Date, we may impose a late payment charge of 1.5% per month or the maximum rate allowed by law, whichever is less, on the unpaid balance until the amount is paid. We may also suspend your services until all delinquent



amounts, including late payment charges, are paid in full. An additional charge will apply to each returned check.

(f) If the Initial Term is for sixty (60) months or more and Services have been installed for at least twenty-four (24) months, Customer may provide TelePacific at [retention@telepacific.com](mailto:retention@telepacific.com) with a bona fide, written quote of a lower monthly charge for a term at least equivalent to the remaining months in the Initial Term from a competitive carrier for the identical Services with the same terms as provided pursuant to this Agreement and all Addendums, one time, and TelePacific shall have thirty (30) calendar days after receipt of the bona fide written quote to match or beat the competitive carrier's offer. "Identical," as used herein, is to be narrowly construed to mean the Services and all terms and conditions must be the same in all material respects. If for any reason TelePacific fails to provide the Services at the lower rate, Customer may terminate the Services without liability for early termination.

### 3. Your Obligations

(a) Our Property. Any equipment installed at your premises by us or shipped to you by TelePacific or our authorized third party vendor remains our personal property, and nothing contained in this Agreement shall give or convey to you any right, title or interest in such equipment. You agree not to interfere with or damage the equipment and you agree to reimburse us for any loss or damage that is caused by your intentional or negligent acts or by the intentional or negligent acts of your agents, employees, authorized users or representatives. You will allow us to remove the equipment from your premises or you will promptly return the equipment to us upon termination of the Services for which the equipment was used.

(b) Building Access. You shall obtain all necessary approvals, applicable permits and/or use fees to be attained, if any, for full access by us prior to installation of Service and while Service is provided.

(c) Responsibility for Message Content. You are solely responsible for all content that you make available on or through our Services. You guarantee that all such content will not infringe on, or contain any content that infringes on, or otherwise violates any copyright, patent or any other right held by a third-party and that all such content will not violate any applicable law, rule, regulation or industry standard.

(d) Use of Services. You will not use the Services for any illegal, unlawful, abusive or fraudulent purpose and will use the Services in such a manner as to prevent damage to our network. Your proper use of the Services includes conforming to all Acceptable Use Policies ("AUP") that are available on request and are displayed at our web site at [www.insidetelepacific.com](http://www.insidetelepacific.com). The AUP may be amended from time to time. If we materially change the AUP, you shall be provided the same right to notification and cancellation provided in Section 1(b) of this Agreement.

(e) Third-Party Obligations. You are responsible to pay any third-party vendor charges. Also, you are responsible to arrange for disconnection and payment of charges related to the disconnection of any related services with your current carrier(s). Disconnection of such services may not be delegated to us.

(f) Network Security. You acknowledge that it is your responsibility to take whatever actions you deem necessary to make your computer and voice network and circuits adequately secure from unauthorized access. You further acknowledge that we only provide telecommunications services and certain equipment to you and that we are not responsible for the security of your network and circuits from third parties, or for any damages that may result from any unauthorized access to your network. Read and follow the Fraud Guidelines provided at [www.insidetelepacific.com](http://www.insidetelepacific.com). Failure to follow the steps provided may result in a greater likelihood that your network will be exposed to fraud. Also, we urge you to seek independent advice with respect to products, equipment (including configurations), and services available to make your computer network and circuits more secure from third parties.

YOU FURTHER ACKNOWLEDGE THAT NONE OF OUR EMPLOYEES, AGENTS, REPRESENTATIVES OR SUBCONTRACTORS HAS MADE, AND THEY DO NOT HAVE THE AUTHORITY TO MAKE, ANY REPRESENTATIONS CONCERNING THE SECURITY OF YOUR NETWORK OR THE SERVICES WE PROVIDE THAT ARE INCONSISTENT WITH THE STATEMENTS

CONTAINED IN THIS SECTION 3(f).

#### **4. Automatic Renewals; Terminations; Rights and Remedies**

(a) This Agreement and any orders for Services submitted under it shall remain in effect until terminated as stated in this Section 4. After the Initial Term, this Agreement will automatically renew for successive periods of one year each at our rates then in effect for your Services unless either party notifies the other in writing within the last sixty (60) days of the then-current Term of the intent not to allow this Agreement to renew for a successive Term. However, after providing such notice, if you continue to use Service(s), by your continued use, you are agreeing to continue to receive and pay for Service(s) under this Agreement on a month-to-month basis. However, even after termination of this Agreement for Services ordered for the original Service Location(s) or additional Service Location(s) covered by this Agreement, the Terms and Conditions of this Agreement will automatically extend to cover any remaining Terms or Service Agreements for any additional Services to additional Service Locations which have not expired. The Term of any such additional Service Agreements shall be subject to the same automatic renewal and termination notice provisions as are contained in this Agreement. If either party gives the other party the required notice of a decision not to allow the Agreement or the Term of any additional Services to additional Service Locations to renew at the expiration of a Term, actual termination of Services will not occur until the later of the end of the then-current Term or thirty (30) days after receipt of that notification. If you elect to terminate the Agreement or any orders for Services before the commencement of billing for Services, you must do so in writing, and you shall pay to TelePacific as a pre-installation cancellation charge an amount equal to: (1) the non-recurring charges applicable to the Services, even if initially waived, unless those charges have already been paid, (2) if your Services require a third party to provide some or all of the underlying services, one month recurring charge times the number of months in the Initial Term for the portion of your Services to be provided by a third party times fifty percent (50%), and (3), if this Agreement is for a Term of one year, an amount equal to three times the one month recurring charges, or, if this Agreement is for a Term of more than one year, an amount equal to six times the one month recurring charges. You agree that such a termination charge is a reasonable amount because, among other reasons, it would be difficult or impossible to calculate the exact amount of damages suffered by us if you terminate this Agreement or any orders for Services.

(b) Either party may terminate this Agreement upon 30 days notice if the other party materially breaches the terms and conditions of this Agreement and the other party fails to cure the default within the 30-day period, including, but not limited to, your failure to pay our invoices for the Services by the Pay By Date. If you terminate this Agreement after our material breach, then you will be responsible only for charges for the period before the date of termination. If, however, we terminate this Agreement as a result of your material breach, or you terminate this Agreement or any Services provided to you for any reason other than our material breach, you shall pay to us a termination charge as follows:

(i) If Service Term is equal to or less than thirty-six (36) months:

(A) If the effective date of the termination occurs before the last year of the Initial or Renewal Term, we will determine the termination charge (also referred to herein as "ETF") as though you had elected an Initial Term ending within the Term year in which you terminate ("Revised Alternate Term"). For example, if you terminate in the 13th month of a three year Term, the Revised Alternate Term would be two years. We will also determine the monthly recurring charge ("MRC") that would have applied if you had chosen the Revised Alternate Term when you first selected a Term ("Default MRC"). You will then pay us a termination charge equal to: (1) the non-recurring charges for the terminated Services, even if those charges had been initially waived (only applies during Initial Term); (2) the difference between the monthly recurring charges you actually paid for the terminated Services through the effective date of termination and the Default MRCs that would have applied under a Revised Alternate Term; and (3) fifty percent (50%) of the Default MRCs for the period starting with the effective date of termination and ending on the expiration of the Revised Alternate Term. If your Services require a third party to provide some or all of the underlying services, in addition to the termination charge calculation stated above, you shall pay fifty percent (50%) of the MRCs for the portion of your Service provided by a third party for the remainder of months in the Initial Term for those Services.

(B) If the effective date of the termination occurs during the last year of the Initial or Renewal Term, you will pay us a termination charge equal to: (1) The non-recurring charges for the terminated Services, even if those charges had been initially waived (only applies during Initial Term); and (2) 50% of the monthly recurring charges for the period starting with the effective date of termination and ending on the expiration of the Initial or Renewal Term.

(ii) If Service Term is greater than thirty-six (36) months, the ETF will be calculated as specified in section 4, paragraph (b) subparagraph (i) above for a termination within the first thirty-six (36) months. Thereafter, for terminations after the thirty-sixth (36<sup>th</sup>) month, the ETF will be twenty-five percent (25%) of the remaining months of MRCs.

If you terminate this Agreement or any Services provided to you for any reason other than our material breach, you shall provide us with written notice to [www.retention@telepacific.com](mailto:www.retention@telepacific.com) thirty (30) days in advance, and the effective date of the termination will be the end of that thirty (30) day notice period for purposes of determining the remaining time over which the termination charge will be calculated. If you do not give us that notice, then the effective date of termination shall be the date we terminate this Agreement. For partial months, remaining monthly recurring charges will be determined on a prorated basis.

(c) If you request that we move your Services from your current Service Location to a different Service Location, you may incur a non-recurring charge ("Move Charge"). The Move Charge may include (i) a termination charge which, as a result of your termination, we become obligated to pay to a third party provider of the underlying facilities, and (ii) installation charge at the new Service Location. Also, a new Term may apply to any Services moved to a new Service Location.

All termination charges are due and payable immediately on the effective date of termination (including the 50% of remaining monthly recurring charges), and are in addition to any monthly recurring charges, usage charges and other charges due as of effective date of termination.

You agree that each of the above termination charges is a reasonable amount to compensate us for lost MRCs and usage charges following termination. You agree because, among other reasons, it would be difficult or impossible to calculate the exact amount of such damages suffered by us if you terminate this Agreement or any orders for Services.

(d) In addition to any other recoveries we are entitled to, we shall be entitled to recover from you for undisputed payment delinquencies all of the costs we incur (including court costs and reasonable attorneys fees) to collect any delinquent charges owed by you along with all other damages we incur as a result of your breach or other termination of this Agreement, including without limitation termination charges, past due recurring and usage charges, any damage to our equipment, any promotional credits provided to you and any amounts we have to pay to third parties because of violations by you of our AUP.

(e) Sections 4 and 5 of this Agreement, inclusive of sub-sections, shall survive any termination or expiration of this Agreement.

#### **5. Warranty Disclaimer, Limitation of Liability and Indemnity**

(a) **WARRANTY DISCLAIMER.** WITHOUT LIMITING ANY EXPRESS FINANCIAL OR LIABILITY PROVISIONS PROVIDED FOR IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST BUSINESS, REVENUE, PROFITS, OR GOODWILL) ARISING IN CONNECTION WITH THIS AGREEMENT OR THE PROVISION OF SERVICES UNDER THIS AGREEMENT (INCLUDING ANY SERVICE IMPLEMENTATION DELAYS/FAILURES), UNDER ANY THEORY INCLUDING WITHOUT LIMITATION TORT, CONTRACT, WARRANTY, STATUTE, STRICT LIABILITY OR NEGLIGENCE, EVEN IF THE PARTY HAS BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. WE MAKE NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY SERVICE PROVIDED. WE SPECIFICALLY DISCLAIM ANY AND ALL IMPLIED WARRANTIES, INCLUDING WITHOUT

LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR TITLE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

(b) Credit Allowances for Interruption of Service. If an interruption or failure of Service is caused solely by us and not by you or any third party or other causes beyond our reasonable control, you may be entitled to a credit allowance not to exceed an amount equivalent to the proportionate charge to you for the affected Service for the time period from the time of your report to us of the Service interruption to the time Service is restored, not to exceed in any month, the total monthly recurring charge owed by you for the affected Service in that month. The specific service levels, related credits and steps you must take to apply for credits are available on our website at <http://insidetelepacific.com/legal/legal-sla.asp>. We shall not be liable for any act or omission of any other entity furnishing you with facilities or equipment used with the Services, nor shall we be liable for any damages or losses due in whole or in part to your fault or negligence or due in whole or in part to the failure of equipment or facilities that you provide.

(c) LIMITATION OF LIABILITY. NOTWITHSTANDING THE PROVISIONS OF SUB-SECTION (a) OF THIS SECTION 5, OUR TOTAL LIABILITY UNDER THIS AGREEMENT SHALL IN NO EVENT EXCEED THE LESSER OF (1) YOUR PROVEN DIRECT DAMAGES, (2) THE AMOUNTS YOU PAID TO US FOR THE SERVICES DURING THE PERIOD IN WHICH ANY SERVICE-RELATED PROBLEMS WERE EXPERIENCED, OR (3) THE CREDITS AVAILABLE TO YOU UNDER OUR TARIFFED LIMITATION OF LIABILITY. THE FOREGOING LIMITATIONS APPLY TO ALL CAUSES OF ACTION AND CLAIMS, INCLUDING WITHOUT LIMITATION BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION AND OTHER TORTS.

(d) Indemnification. You will defend, indemnify and hold us harmless (including our officers, directors, employees, agents, and contractors) from any claims, liabilities, losses, damages and expenses (including reasonable attorneys fees and costs) arising out of or relating to your use of the Services. This indemnity will not be available if the damage or loss is due to our willful or reckless acts or omissions. Subject to the limitation of liability set forth in sub-section (c) of this Section, we will defend, indemnify and hold you harmless (including your officers, directors, employees, agents, licensees or contractors) from any claims, liabilities, losses, damages and expenses (including reasonable attorneys fees and court costs), arising out of or relating to our delivery of the Services to you. This indemnity will not be available if the damage or loss is due to your willful or reckless acts or omissions.

## **6. Miscellaneous Provisions**

(a) Assignment and Succession. You may not assign or transfer this Agreement without our prior written consent, which shall not be unreasonably withheld. Any unauthorized assignment or transfer shall be null and void. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, executors, administrators, legal representatives, successor and authorized assigns.

(b) Governing Law. This Agreement shall be construed pursuant to the laws of the state where the services are provided without regard to the conflicts of law provisions thereof.

(c) Force Majeure. We shall not be liable for any failure of performance of the Services due to causes beyond our control, including, but not limited to, fire, flood, electric power interruptions, national emergencies, civil disorder, acts of terrorists, riots, strikes, lockouts, work stoppages, Acts of God, or any law, regulation, directive, or order of the United States government, or any other governmental agency, including state and local governments having jurisdiction over us or the Services provided hereunder.

(d) Arbitration. If you and we cannot resolve between ourselves any dispute arising under this Agreement, you and we shall promptly submit the dispute to binding arbitration at the office of the American Arbitration Association ("AAA") located in the City or County of the state where the services are provided, or, if there is no AAA office at that location, then at the AAA office closest to where the services are provided ("Arbitration Site"). The arbitration will be held in accordance with the commercial arbitration rules of the AAA. Either party may initiate arbitration by providing written demand for arbitration (with a

copy to the other party), a copy of this Agreement and the administrative fee required by the AAA rules to the AAA office serving the Arbitration Site. The remaining cost of the arbitration shall be shared equally by the parties unless the arbitration award provides otherwise. Each party shall bear the cost of preparing and presenting its case in an arbitration, unless the arbitration award provides otherwise. You and we agree to undertake all reasonable steps to expedite the arbitration process. One arbitrator will be appointed in accordance with the AAA rules within 30 calendar days of the submission of the demand for arbitration. The arbitrator will designate the time and place for the Arbitration within 30 days of appointment. The parties agree that the arbitrator's authority to grant relief shall be subject to the provisions of this Agreement, our applicable tariffs, if any, and any other applicable law. The arbitrator shall not be entitled to award, nor shall either party be entitled to receive, punitive, incidental, exemplary, consequential, reliance or special damages, including damages for lost profits. The arbitrator's decision shall follow the plain meaning of this Agreement and shall be final, binding and enforceable in a court of competent jurisdiction. The parties waive any right to trial by jury and to participate in or initiate class actions; if the parties cannot waive these rights, this entire section is null and void.

(e) Entire Agreement and Modifications. This Agreement and all other documents specifically referred to in this Agreement constitute the entire and final agreement and understanding between you and us with respect to the subject matter of this Agreement and supersede all prior agreements relating to such subject matter, which are of no further force or effect. Any and all exhibits referred to in this Agreement are integral parts of this Agreement and are made a part of this Agreement. This Agreement may only be modified or supplemented by an instrument in writing executed by both your and our duly authorized representatives or by a written notice of change pursuant to section 1(b) hereof.

(f) Severability. If any provision of this Agreement is held to be invalid or unenforceable by a court or administrative agency with jurisdiction over the Services, such provision shall be deemed amended to the minimum extent necessary to render it enforceable.

(g) Headings. The headings used in this Agreement are for convenience only and do not in any way limit or otherwise affect the meaning of any of the terms.

(h) Waiver. Under no circumstances shall either party's failure to enforce any provision of this Agreement in any particular instance be construed as a waiver of that provision.

(i) Notices. All notices from you to us must be in writing and delivered by certified mail, return receipt requested or by Federal Express or other similar expedited delivery service to: U.S. TelePacific Corp., Attn. General Counsel, 515 S. Flower Street, 47<sup>th</sup> Floor, Los Angeles, CA 90071-2201. If you are notifying us that you do not wish to renew Services, your written notice may be by a letter delivered in that manner or by an email to: [retention@telepacific.com](mailto:retention@telepacific.com).

(j.) Limitation on Actions. Any legal action arising in connection with this Agreement must begin within two (2) years after the cause of action arises.

## **7. Service Guarantee**

Notwithstanding anything to the contrary contained in this Agreement, you may terminate this Agreement without any further obligation if the Services we provide are not substantially performing up to industry standards during the first 90 days the Services are available for your use. If you elect to terminate the Agreement pursuant to this guarantee, we will reimburse you for all reasonable costs you incurred to re-establish service with your previous service provider not to exceed the amount that you paid to us for installation of the Services. This Service Guarantee only applies if: (a) the cause of the Service deficiency was within our reasonable control; (b) you ordered at least the amount of Services that we recommended to meet your traffic volumes; (c) you give us written notice of the deficiency within the first ninety (90) days after we notified you the Services are available for your use, and (d) we fail to correct the Service deficiency within fifteen (15) days after receiving written notice from you of the deficiency.





## **TelePacific Communications - Voice, Data and Integrated Service Level Agreement (SLA)**

### **1. General**

TelePacific Communications is committed to providing its customers with the highest quality voice, integrated and data services. As a result, TelePacific will guarantee network service levels, for the following categories, if applicable to services purchased: Network Availability Guarantee, Mean Time to Repair (MTTR) Guarantee, Latency Guarantee, Packet Loss Guarantee and Jitter Guarantee. These guarantees apply to those services that utilize TelePacific's network of T1, DS3 and Ethernet based services for its voice, integrated and/or data including those services described in Section 3 below. For integrated services the SLA will only apply to the service affected by the impairment.

TelePacific service is interrupted when it becomes unusable to the Customer because of failure of the TelePacific network or facility component used to provide service under this agreement. An interruption period begins when an inoperative service is reported to TelePacific and the service is released for testing and repair and ends when the service is operative.

### **2. Service Credit Claim Procedure and Limitations**

The customer must initiate the service credit claim within 45 business days after the end of the month during or for which the event occurred. TelePacific will take all measures it deems appropriate to investigate reported failures. In no event shall the combined credits for the guarantees listed above, separately or combined with any other service credit claims against TelePacific, exceed in any month the total monthly recurring charge owed by the customer for the service in that month. No more than one service credit allowance shall be provided to a customer for an outage or interruption in service from a single or the same occurrence.

No credit allowance for service interruptions will be made under the following circumstances:

- Interruptions caused by the negligence of the customer.
- Interruptions of a service due to the failure of equipment or systems provided by the customer or others.
- Interruptions of a service during any period in which TelePacific does not have access to the premises where the service is located.
- Interruptions of a service when the customer has released the service to TelePacific for maintenance purposes, to make rearrangements or for the implementation of an order for a change in the service during the time period that was negotiated with the customer prior to the release of that service.
- Interruptions of service that are planned service interruptions. A planned service interruption is a service interruption that is required to facilitate network maintenance or upgrades. TelePacific shall use reasonable efforts to notify the customer one week in advance when a planned service interruption is scheduled to take place. In the event an emergency should arise, TelePacific will attempt to notify the customer of a planned service interruption as far in advance as possible.
- Interruptions of service when the customer elects not to release the service for testing and/or repair and continues to use it on an impaired basis.
- Interruptions caused by or related to labor difficulties, governmental orders, civil commotions, acts of terrorism, criminal actions taken against TelePacific, acts of God and other circumstances beyond TelePacific's reasonable control.
- Interruptions of service during periods of temporary discontinuance of service as specified in TelePacific's applicable tariffs.

### 3. Guarantees for Voice, Integrated and Data T1, DS3 and Ethernet Services

SLA	Voice	Integrated	On net Data	OneNet Extended Reach
<b>Services</b>	Business Lines, PRI, SuperTrunk	SmartVoice, OnePac, Flex, Mpower Office	Internet T1, Fractional Internet T1, Bonded T1, DS3, Ethernet OneNet IP VPN Dedicated Internet Access, and Mpower Connect	Extended Reach – lower 48 states. International SLAs vary.
<b>Demarc</b>	TPAC network or facility component used to provide service			
<b>Network Availability</b>	<b>99.999%</b> <b>TelePacific Core Network</b>			
Time Interval	Calendar Month			
Remedy	<4 hours \$0 >=4 hours 1/30 <sup>th</sup> MRC for each hour exceeding 4 hours			
<b>MTTR</b>	<b>4 hours</b> <b>Local Access Circuit</b>			
Remedy	<4 hours \$0 >=4 hours 1/30 <sup>th</sup> MRC for each hour exceeding 4 hours			
<b>Latency</b>		<b>60 ms</b>	<b>60 ms</b>	<b>120 ms</b>
Time Interval		Month	Calendar Month	Calendar Month
Remedy		1/30 <sup>th</sup> MRC per 1ms above 60ms average	1/30 <sup>th</sup> MRC per 1ms above 60ms average	1/30 <sup>th</sup> MRC per 1ms above 120ms average
<b>Packet Loss</b>		<b>&lt;1%</b>	<b>&lt;=1%</b>	<b>&lt;=1%</b>
Time Interval		Month	Calendar Month	Calendar Month
Remedy		1/30 <sup>th</sup> MRC per 1ms above 1%	1/30 <sup>th</sup> MRC per 1% above 1%	1/30 <sup>th</sup> MRC per 1% above 1%
<b>Jitter</b>			①Net services only COS 1 <=5ms COS 2 <=7ms	①Net services only COS 1 <=7ms COS 2 <=14ms
Time Interval			Calendar Month	Calendar Month
Remedy			1/30 <sup>th</sup> MRC for each 2ms above SLA for one Class of Service	1/30 <sup>th</sup> MRC for each 2ms above SLA for one Class of Service

# STATE OF UTAH - STATE COOPERATIVE CONTRACT

CONTRACT NUMBER AR627

1. **CONTRACTING PARTIES:** This State Cooperative Contract is between the **Division of Purchasing and General Services (State)**, 3150 State Office Building, PO Box 141061, Salt Lake City, UT 84114-1061, an agency of the State of Utah, and the following CONTRACTOR:

ShoreTel Inc.

Name		
<u>960 Stewart Dr</u>		
Address		
<u>Sunnyvale</u>	<u>CA</u>	<u>94085</u>
City	State	Zip

## LEGAL STATUS OF CONTRACTOR

- ☐ Sole Proprietor  
☐ Non-Profit Corporation  
☒ For-Profit Corporation  
☐ Partnership  
☐ Government Agency

Contact Person Holly Davis Phone #408-900-1195 Fax # 408-900-1195 Email hdavis@shoretel.com  
Federal Tax ID# 770443568 Vendor #VC0000182077 Commodity Code #20458, 20464, 20621, 20623, 20659,  
83833, 83800, 88332, 92000

2. **GENERAL PURPOSE OF CONTRACT:** The general purpose of this contract is to provide:

Data communication equipment and services. A detailed list of awarded categories and subcategories are included in Attachment B - Scope of Work.

ShoreTel Inc. is authorized to provide equipment and services in the following categories:  
5.3.0 Unified Communications.

3. **CONTRACT PERIOD:** Effective date: June 1, 2014 Termination date: May 31, 2019 unless terminated early or extended in accordance with the terms and conditions of this contract. Renewal options (if any): N/A

4. **PRICING AS PER THE ATTACHMENT C**

PAYMENT TERMS: Net 30

DAYS REQUIRED FOR DELIVERY: 30 days ARO

MINIMUM ORDER: N/A

FREIGHT TERMS: FOB Destination, Freight Prepaid

5. **ATTACHMENT A:** WSCA-NASPO Standard Contract Terms and Conditions

**ATTACHMENT B:** Scope of Work

**ATTACHMENT C:** Pricing

**ATTACHMENT D:** Vendor's Response to Solicitation JP14001. The parties hereby acknowledge and agree that any exceptions stated in attachment "D" – Vendor's Proposal Response have been removed and/or resolved between the parties. Any exception in attachment "D" are explicitly NOT a part of this contract.

Any conflicts between Attachment A and other Attachments will be resolved in favor of Attachment A. State specific Terms and Conditions will be found in the executed Participating Addendums. State Terms and Conditions in an executed Participating Addendum will take priority in the event of conflict between those terms and conditions and this Cooperative Contract.

6. **DOCUMENTS INCORPORATED INTO THIS CONTRACT BY REFERENCE BUT NOT ATTACHED:**

a. All other governmental laws, regulations, or actions applicable to the goods and/or services authorized by this contract.




State of Utah Contract Number AR627 Page 2 of 2

- b. Utah State Procurement Code, Procurement Rules, CONTRACTOR'S response to Bid #JP14001 and JP14001-1 dated August 30, 2013 and December 2, 2013, and Bid #JP14001 and JP14001-1 dated August 30, 2013 and December 2, 2013.

IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

CONTRACTOR

STATE OF UTAH

	
Contractor's Signature	Director, Div. of Purchasing & General Svs.
<u>3/12/14</u>	<u>3/17/14</u>
Date	Date
	
Type or Print Name and Title	

## ATTACHMENT A – WSCA-NASPO Terms and Conditions



### WSCA-NASPO Master Agreement Terms and Conditions

#### **1. AGREEMENT ORDER OF PRECEDENCE:**

The Master Agreement shall consist of the following documents:

1. A Participating Entity's Participating Addendum ("PA");
2. WSCA-NASPO Master Agreement Terms and Conditions;
3. The Statement of Work;
4. The Solicitation; and
5. Contractor's response to the Solicitation.

These documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. Contractor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to this Master Agreement as an Exhibit or Attachment. No other terms and conditions shall apply, including terms and conditions listed in the Contractor's response to the Solicitation, or terms listed or referenced on the Contractor's website, in the Contractor quotation/sales order or in similar documents subsequently provided by the Contractor.

**2. AMENDMENTS** The terms of this Master Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the WSCA-NASPO Contract Administrator.

**3. ASSIGNMENT/SUBCONTRACT** Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of the WSCA-NASPO Contract Administrator.

**4. CANCELLATION** Unless otherwise stated in the special terms and conditions, any Master Agreement may be canceled by either party upon 60 days notice, in writing, prior to the effective date of the cancellation. Further, any Participating State may cancel its

participation upon 30 days written notice, unless otherwise limited or stated in the special terms and conditions of this solicitation. Cancellation may be in whole or in part. Any cancellation under this provision shall not effect the rights and obligations attending orders outstanding at the time of cancellation, including any right of and Purchasing Entity to indemnification by the Contractor, rights of payment for goods/services delivered and accepted, and rights attending any warranty or default in performance in association with any order. Cancellation of the Master Agreement due to Contractor default may be immediate.

## **5. CONFIDENTIALITY, NON-DISCLOSURE AND INJUNCTIVE RELIEF**

**5.1 Confidentiality.** Contractor acknowledges that it and its employees or agents may, in the course of providing the Product under this Master Agreement, be exposed to or acquire information that is confidential to Participating Entity or Participating Entity's clients. Any and all information of any form that is marked as confidential or would by its nature be deemed confidential obtained by Contractor or its employees or agents in the performance of this Master Agreement, including, but not necessarily limited to (a) any Participating Entity records, (b) personnel records, and (c) information concerning individuals, is confidential information of Participating Entity ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated in the same manner as the Confidential Information. Confidential Information does not include information that (a) is or becomes (other than by disclosure by Contractor) publicly known; (b) is furnished by Participating Entity to others without restrictions similar to those imposed by this Master Agreement; (c) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Master Agreement; (d) is obtained from a source other than Participating Entity without the obligation of confidentiality, (e) is disclosed with the written consent of Participating Entity or; (f) is independently developed by employees, agents or subcontractors of Contractor who can be shown to have had no access to the Confidential Information.

**5.2 Non-Disclosure.** Contractor shall hold Confidential Information in confidence, using at least the industry standard of confidentiality, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the performance of this Master Agreement to Participating Entity hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use commercially reasonable efforts to assist Participating Entity in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Contractor shall advise Participating Entity immediately if Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Master Agreement and Contractor shall at its expense cooperate with Participating Entity in seeking injunctive or other equitable relief in the name of Participating Entity or Contractor against any such person. Except as directed by Participating Entity, Contractor will not at any time

during or after the term of this Master Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Master Agreement, and that upon termination of this Master Agreement or at Participating Entity's request, Contractor shall turn over to Participating Entity all documents, papers, and other matter in Contractor's possession that embody Confidential Information. Notwithstanding the foregoing, Contractor may keep one copy of such Confidential Information necessary for quality assurance, audits and evidence of the performance of this Master Agreement.

**5.3 Injunctive Relief.** Contractor acknowledges that breach of this Section, including disclosure of any Confidential Information, will cause irreparable injury to Participating Entity that is inadequately compensable in damages. Accordingly, Participating Entity may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Participating Entity and are reasonable in scope and content.

**6. DEBARMENT** The contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If the contractor cannot certify this statement, attach a written explanation for review by WSCA-NASPO.

## **7. DEFAULTS & REMEDIES**

a. The occurrence of any of the following events shall be an event of default under this Master Agreement:

- i. Nonperformance of contractual requirements; or
- ii. A material breach of any term or condition of this Master Agreement; or
- iii. Any representation or warranty by Contractor in response to the solicitation or in this Master Agreement proves to be untrue or materially misleading; or
- iv. Institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) calendar days after the institution or occurrence thereof; or
- v. Any default specified in another section of this Master Agreement.

b. Upon the occurrence of an event of default, Lead State shall issue a written notice of default, identifying the nature of the default, and providing a period of 15 calendar days in which Contractor shall have an opportunity to cure the default. The Lead State shall not be required to provide advance written notice or a cure period and may immediately terminate this Master Agreement in whole or in part if the Lead State, in its sole discretion, determines that it is reasonably necessary to preserve public safety or prevent immediate public crisis. Time allowed for cure shall not diminish or eliminate Contractor's liability for damages, including liquidated damages to the extent provided for under this Master Agreement.

c. If Contractor is afforded an opportunity to cure and fails to cure the default within the period specified in the written notice of default, Contractor shall be in breach of its

obligations under this Master Agreement and Lead State shall have the right to exercise any or all of the following remedies:

- i. Exercise any remedy provided by law; and
- ii. Terminate this Master Agreement and any related Contracts or portions thereof; and
- iii. Impose liquidated damages as provided in this Master Agreement; and
- iv. Suspend Contractor from receiving future bid solicitations; and
- v. Suspend Contractor's performance; and
- vi. Withhold payment until the default is remedied.

d. In the event of a default under a Participating Addendum, a Participating Entity shall provide a written notice of default as described in this section and have all of the rights and remedies under this paragraph regarding its participation in the Master Agreement, in addition to those set forth in its Participating Addendum.

**8. DELIVERY** Unless otherwise indicated in the Master Agreement, the prices are the delivered price to any Participating State agency or political subdivision. All deliveries shall be F.O.B. destination with all transportation and handling charges paid by the contractor. Responsibility and liability for loss or damage shall remain the Contractor until final inspection and acceptance when responsibility shall pass to the Buyer except as to latent defects, fraud and Contractor's warranty obligations. The minimum shipment amount will be found in the special terms and conditions. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an order to be shipped without transportation charges that is back ordered shall be shipped without charge.

**9. FORCE MAJEURE** Neither party to this Master Agreement shall be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. WSCA-NASPO may terminate this Master Agreement after determining such delay or default will reasonably prevent successful performance of the Master Agreement.

**10. GOVERNING LAW** This procurement and the resulting agreement shall be governed by and construed in accordance with the laws of the state sponsoring and administering the procurement. The construction and effect of any Participating Addendum or order against the Master Agreement(s) shall be governed by and construed in accordance with the laws of the Participating Entity's State. Venue for any claim, dispute or action concerning an order placed against the Master Agreement(s) or the effect of an Participating Addendum shall be in the Purchasing Entity's State.

**11. INDEMNIFICATION** The Contractor shall defend, indemnify and hold harmless WSCA-NASPO, the Lead State and Participating Entities along with their officers, agencies, and employees as well as any person or entity for which they may be liable from and against claims, damages or causes of action including reasonable attorneys' fees and related costs for any death, injury, or damage to property arising from act(s), error(s), or omission(s) of the Contractor, its employees or subcontractors or volunteers, at any tier, relating to the



performance under the Master Agreement. This section is not subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement

**12. INDEMNIFICATION - INTELLECTUAL PROPERTY** The Contractor shall defend, indemnify and hold harmless WSCA-NASPO, the Lead State and Participating Entities along with their officers, agencies, and employees as well as any person or entity for which they may be liable ("Indemnified Party") from and against claims, damages or causes of action including reasonable attorneys' fees and related costs arising out of the claim that the Product or its use, infringes Intellectual Property rights ("Intellectual Property Claim"). The Contractor's obligations under this section shall not extend to any combination of the Product with any other product, system or method, unless:

(1) the Product, system or method is:

(a) provided by the Contractor or the Contractor's subsidiaries or affiliates;

(b) specified by the Contractor to work with the Product; or

(c) reasonably required, in order to use the Product in its intended manner, and the infringement could not have been avoided by substituting another reasonably available product, system or method capable of performing the same function; or

(2) it would be reasonably expected to use the Product in combination with such product, system or method.

The Indemnified Party shall notify the Contractor within a reasonable time after receiving notice of an Intellectual Property Claim. Even if the Indemnified Party fails to provide reasonable notice, the Contractor shall not be relieved from its obligations unless the Contractor can demonstrate that it was prejudiced in defending the Intellectual Property Claim resulting in increased expenses or loss to the Contractor. If the Contractor promptly and reasonably investigates and defends any Intellectual Property Claim, it shall have control over the defense and settlement of it. However, the Indemnified Party must consent in writing for any money damages or obligations for which it may be responsible. The Indemnified Party shall furnish, at the Contractor's reasonable request and expense, information and assistance necessary for such defense. If the Contractor fails to vigorously pursue the defense or settlement of the Intellectual Property Claim, the Indemnified Party may assume the defense or settlement of it and the Contractor shall be liable for all costs and expenses, including reasonable attorneys' fees and related costs, incurred by the Indemnified Party in the pursuit of the Intellectual Property Claim. This section is not subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement.

**13. INDEPENDENT CONTRACTOR** The contractor shall be an independent contractor, and as such shall have no authorization, express or implied to bind WSCA-NASPO or the respective states to any agreements, settlements, liability or understanding whatsoever, and agrees not

to perform any acts as agent for WSCA-NASPO or the states, except as expressly set forth herein.

**14. INDIVIDUAL CUSTOMER** Except to the extent modified by a Participating Addendum, each Participating Entity shall follow the terms and conditions of the Master Agreement and applicable Participating Addendum and will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement, including but not limited to, any indemnity or to recover any costs allowed in the Master Agreement and applicable Participating Addendum for their purchases. Each Participating Entity will be responsible for its own charges, fees, and liabilities. The Contractor will apply the charges and invoice each Participating Entity individually.

**15. INSURANCE** Contractor shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the Participating Entity's state and having a rating of A-, Class VII or better, in the most recently published edition of Best's Reports. Failure to buy and maintain the required insurance may result in this Master Agreement's termination or at a Participating Entity's option, result in termination of its Participating Addendum.

Coverage shall be written on an occurrence basis. The minimum acceptable limits shall be as indicated below, with no deductible for each of the following categories:

- a) Commercial General Liability covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate;
- b) Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.

Contractor shall pay premiums on all insurance policies. Such policies shall also reference this Master Agreement and shall have a condition that they not be revoked by the insurer until thirty (30) calendar days after notice of intended revocation thereof shall have been given to Participating Entity by the Contractor.

Prior to commencement of the work, Contractor shall provide to the Participating Entity a written endorsement to the Contractor's general liability insurance policy that (i) names the Participating Entity as an additional insured, (ii) provides that no material alteration, cancellation, non-renewal, or expiration of the coverage contained in such policy shall have effect unless the named Participating Entity has been given at least thirty (30) days prior written notice, and (iii) provides that the Contractor's liability insurance policy shall be primary, with any liability insurance of the Participating Entity as secondary and noncontributory.

Contractor shall furnish to Participating Entity copies of certificates of all required insurance within thirty (30) calendar days of the Participating Addendum's effective date and prior to performing any work. Copies of renewal certificates of all required insurance shall be

furnished within thirty (30) days after renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this section. Failure to provide evidence of coverage may, at State's sole option, result in this Master Agreement's termination.

Coverage and limits shall not limit Contractor's liability and obligations under this Master Agreement.

**16. LAWS AND REGULATIONS** Any and all supplies, services and equipment offered and furnished shall comply fully with all applicable Federal and State laws and regulations.

**17. LICENSE OF PRE-EXISTING INTELLECTUAL PROPERTY** Contractor grants to the Participating Entity a nonexclusive, perpetual, royalty-free, irrevocable, unlimited license to publish, translate, reproduce, modify, deliver, perform, display, and dispose of the Intellectual Property, and its derivatives, used or delivered under this Master Agreement, but not created under it ("Pre-existing Intellectual Property"). The license shall be subject to any third party rights in the Pre-existing Intellectual Property. Contractor shall obtain, at its own expense, on behalf of the Participating Entity, written consent of the owner for the licensed Pre-existing Intellectual Property.

**18. NO WAIVER OF SOVEREIGN IMMUNITY** In no event shall this Master Agreement, any Participating Addendum or any contract or any purchase order issued thereunder, or any act of a Lead State or a Participating Entity, be a waiver by the Participating Entity of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.

If a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the Participating State. This section applies to a claim brought against the Participating State only to the extent Congress has appropriately abrogated the Participating State's sovereign immunity and is not consent by the Participating State to be sued in federal court. This section is also not a waiver by the Participating State of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

**19. ORDER NUMBERS** Master Agreement order and purchase order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.

**20. PARTICIPANTS** WSCA-NASPO is the cooperative purchasing arm of the National Association of State Procurement Officials. It is a cooperative group contracting consortium for state government departments, institutions, agencies and political subdivisions (e.g.,

colleges, school districts, counties, cities, etc.,) for all 50 states, the District of Columbia and the organized US territories. Obligations under this Master Agreement are limited to those Participating States who have signed a Participating Addendum where contemplated by the solicitation. Financial obligations of Participating States are limited to the orders placed by the departments or other state agencies and institutions having available funds. Participating States incur no financial obligations on behalf of political subdivisions. Unless otherwise specified in the solicitation, the resulting award(s) will be permissive.

**21. ENTITY PARTICIPATION** Use of specific WSCA-NASPO cooperative Master Agreements by state agencies, political subdivisions and other entities (including cooperatives) authorized by individual state's statutes to use state contracts are subject to the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the respective State Chief Procurement Official.

**22. PAYMENT** Payment for completion of a contract order is normally made within 30 days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance. Payments will be remitted by mail. Payments may be made via a State or political subdivision "Purchasing Card" with no additional charge.

**23. PUBLIC INFORMATION** This Master Agreement and all related documents are subject to disclosure pursuant to the Participating Entity's public information laws.

**24. RECORDS ADMINISTRATION AND AUDIT** The contractor will maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the contractor for costs authorized by this Master Agreement. These records will be retained by the contractor for at least four years after the Master Agreement terminates, or until all audits initiated within the four years have been completed, whichever is later. The contractor agrees to allow WSCA-NASPO, State and Federal auditors, and state agency staff access to all the records of this Master Agreement and any order placed under this Master Agreement, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.

**25. REPORTS and ADMINISTRATIVE FEES** The contractor shall submit quarterly reports to the WSCA-NASPO Contract Administrator showing the quantities and dollar volume of purchases by each participating entity.

The contractor must pay a WSCA-NASPO administrative fee of one quarter of one percent (.25%) in accordance with the terms and conditions of the Master Agreement. The WSCA-NASPO administrative fee shall be submitted quarterly and is based on sales of products and services. The WSCA-NASPO administration fee is not negotiable. This fee is to be included as part of the pricing submitted with proposal.

Additionally, some States may require that an additional fee be paid directly to the State on purchases made by procuring entities within that State. For all such requests, the fee level, payment method and schedule for such reports and payments will be incorporated in a Participating Addendum that is made a part of the Master Agreement. The contractor may adjust the Master Agreement pricing accordingly for purchases made by procuring agencies within the jurisdiction of the State. All such agreements may not affect the WSCA-NASPO administrative fee or the prices paid by the procuring agencies outside the jurisdiction of the State requesting the additional fee.

**26. STANDARD OF PERFORMANCE AND ACCEPTANCE** The Standard of Performance applies to all Product(s) purchased under this Master Agreement, including any additional, replacement, or substitute Product(s) and any Product(s) which are modified by or with the written approval of Contractor after Acceptance by the Participating Entity. The Acceptance Testing period shall be thirty (30) calendar days or other time period identified in the solicitation or the Participating Addendum, starting from the day after the Product is installed and Contractor certifies that the Product is ready for Acceptance Testing. If the Product does not meet the Standard of Performance during the initial period of Acceptance Testing, Participating Entity may, at its discretion, continue Acceptance Testing on a day-to-day basis until the Standard of Performance is met. Upon rejection, the Contractor will have fifteen (15) calendar days to cure the Standard of Performance issue(s). If after the cure period, the Product still has not met the Standard of Performance Participating Entity may, at its option: (1) declare Contractor to be in breach and terminate the Order; (2) demand replacement Product from Contractor at no additional cost to Participating Entity; or, (3) continue the cure period for an additional time period agreed upon by the Participating Entity and the Contractor. Contractor shall pay all costs related to the preparation and shipping of Product returned pursuant to the section. No Product shall be accepted and no charges shall be paid until the Standard of Performance is met. The warranty period will begin upon Acceptance.

**27. SYSTEM FAILURE OR DAMAGE** In the event of system failure or damage caused by the Contractor or its Product, the Contractor agrees to use its best efforts to restore or assist in restoring the system to operational capacity.

**28. TITLE OF PRODUCT** Upon Acceptance by the Participating Entity, Contractor shall convey to Participating Entity title to the Product free and clear of all liens, encumbrances, or other security interests. Transfer of title to the Product shall include an irrevocable and perpetual license to use the Embedded Software in the Product. If Participating Entity subsequently transfers title of the Product to another entity, Participating Entity shall have the right to transfer the license to use the Embedded Software with the transfer of Product title. A subsequent transfer of this software license shall be at no additional cost or charge to either Participating Entity or Participating Entity's transferee.

**29. WAIVER OF BREACH** Failure of Lead State or Participating Entity to declare a default or enforce any rights and remedies shall not operate as a waiver under this Master Agreement or Participating Addendum. Any waiver by the Lead State or Participating Entity must be in writing. Waiver by the Lead State or Participating Entity of any default, right or remedy under this Master Agreement or Participating Addendum, or breach of any terms or requirements shall not be construed or operate as a waiver of any subsequent default or breach of such term or requirement, or of any other term or requirement under this Master Agreement or Participating Addendum.

**30. WARRANTY** The Contractor warrants for a period of one year from the date of Acceptance that: (a) the Product performs according to all specific claims that the Contractor made in its response to the solicitation, (b) the Product is suitable for the ordinary purposes for which such Product is used, (c) the Product is suitable for any special purposes identified in the solicitation or for which the Participating Entity has relied on the Contractor's skill or judgment, (d) the Product is designed and manufactured in a commercially reasonable manner, and (e) the Product is free of defects. Upon breach of the warranty, the Contractor will repair or replace (at no charge to the Participating Entity) the Product whose nonconformance is discovered and made known to the Contractor. If the repaired and/or replaced Product proves to be inadequate, or fails of its essential purpose, the Contractor will refund the full amount of any payments that have been made. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation, actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.

See Attachment D - Vendor RFP Response for warranty details.

**31. ASSIGNMENT OF ANTITRUST RIGHTS** Contractor irrevocably assigns to a Participating Entity any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of state or federal antitrust laws (15 U.S.C. § 1-15 or a Participating Entity's state antitrust provisions), as now in effect and as may be amended from time to time, in connection with any goods or services provided to the Contractor for the purpose of carrying out the Contractor's obligations under this Master Agreement or Participating Addendum, including, at a Participating Entity's option, the right to control any such litigation on such claim for relief or cause of action.

Contractor shall require any subcontractors hired to perform any of Contractor's obligations, under this Master Agreement or Participating Addendum, to irrevocably assign to a Participating Entity, as third party beneficiary, any right, title or interest that has accrued or which may accrue in the future by reason of any violation of state or federal antitrust laws (15 U.S.C. § 1-15 or a Participating Entity's state antitrust provisions), as now in effect and as may be amended from time to time, in connection with any goods or services provided to the subcontractor for the purpose of carrying out the subcontractor's obligations to the Contractor in pursuance of this Master Agreement or Participating Addendum, including, at a

Participating Entity's option, the right to control any such litigation on such claim for relief or cause of action.

**32. WSCA-NASPO eMARKET CENTER** Awarded responders are required to participate in the WSCA-NASPO eMarket Center and, working through WSCA-NASPO's contractor (SciQuest), connect with the eMarket Center. The ideal situation would be to use either a hosted (by SciQuest) or Punchout Level 2 catalog configurations, but actual requirements will be determined by the Lead State Contract Administrator, WSCA-NASPO, WSCA-NASPO's contractor (SciQuest) and the awarded contractor, after award. Participation does not require an awarded responder to have any special level of technology or technological understanding.

### **Definitions**

**Acceptance** - means a written notice from a purchasing entity to contractor advising Contractor that the Product has passed its Acceptance Testing. Acceptance of a product for which acceptance testing is not required shall occur following the completion of delivery, installation, if required, and a reasonable time for inspection of the product, unless the Purchasing Entity provides a written notice of rejection to contractor.

**Acceptance Testing** - means the process for ascertaining that the Product meets the standards set forth in the section titled Standard of Performance and Acceptance, prior to Acceptance by the Purchasing Entity.

**Contractor** - means the person or entity delivering Products or performing services under the terms and conditions set forth in this Master Agreement.

**Intellectual Property** - means any and all patents, copyrights, service marks, trademarks, trade secrets, trade names, patentable inventions, or other similar proprietary rights, in tangible or intangible form, and all rights, title, and interest therein.

**Lead State** - means the State conducting this cooperative solicitation and centrally administering any resulting Master Agreement with the permission of the Signatory States.

**Master Agreement** - means the underlying agreement executed by and between the Lead State, as WSCA-NASPO contract administrator, acting on behalf of WSCA-NASPO, and the Contractor, as now or hereafter amended.

**Order** - means any purchase order, sales order, or other document used by a Participating Entity to order the Products.

**Participating Addendum** - means a bilateral agreement executed by a Contractor and a Participating Entity incorporating this Master Agreement and any other additional Participating Entity specific language or other requirements ,e.g. ordering procedures specific to the Participating Entity, other terms and conditions.

**Participating Entity** - means a state, or other legal entity, properly authorized by a state to enter into the Master Agreement or Participating Addendum or who is authorized to order under the Master Agreement or Participating Addendum.

**Product** - Any equipment, software (including embedded software), documentation, or deliverable supplied or created by the Contractor pursuant to this Master Agreement.

**WSCA-NASPO** -is a cooperative group contracting consortium for state procurement officials, representing departments, institutions, agencies, and political subdivisions (i.e., colleges, school districts, counties, cities, etc.) for all states and the District of Columbia. WSCA-NASPO is a cooperative purchasing arm of the National Association of State Procurement Officials (NASPO).

#### **Additional Definitions and Alternative Terms for Consideration**

Below are additional definitions and alternative terms for consideration by the sourcing teams depending upon the nature of the solicitation and negotiations between the Contractor and Vendor.

**Embedded Software** - means one or more software applications which permanently reside on a computing device.

**Machine Code** - means microcode, basic input/output system code, utility programs, device drivers, diagnostics, and another code delivered with a computing device for the purpose of enabling the function of the computing device, as stated in its published specifications.

(revised March 2013)



## ATTACHMENT A – WSCA-NASPO Terms and Conditions



### WSCA-NASPO Master Agreement Terms and Conditions

#### **1. AGREEMENT ORDER OF PRECEDENCE:**

The Master Agreement shall consist of the following documents:

1. A Participating Entity's Participating Addendum ("PA");
2. WSCA-NASPO Master Agreement Terms and Conditions;
3. The Statement of Work;
4. The Solicitation; and
5. Contractor's response to the Solicitation.

These documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. Contractor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to this Master Agreement as an Exhibit or Attachment. No other terms and conditions shall apply, including terms and conditions listed in the Contractor's response to the Solicitation, or terms listed or referenced on the Contractor's website, in the Contractor quotation/sales order or in similar documents subsequently provided by the Contractor.

**2. AMENDMENTS** The terms of this Master Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the WSCA-NASPO Contract Administrator.

**3. ASSIGNMENT/SUBCONTRACT** Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of the WSCA-NASPO Contract Administrator.

**4. CANCELLATION** Unless otherwise stated in the special terms and conditions, any Master Agreement may be canceled by either party upon 60 days notice, in writing, prior to the effective date of the cancellation. Further, any Participating State may cancel its

participation upon 30 days written notice, unless otherwise limited or stated in the special terms and conditions of this solicitation. Cancellation may be in whole or in part. Any cancellation under this provision shall not effect the rights and obligations attending orders outstanding at the time of cancellation, including any right of and Purchasing Entity to indemnification by the Contractor, rights of payment for goods/services delivered and accepted, and rights attending any warranty or default in performance in association with any order. Cancellation of the Master Agreement due to Contractor default may be immediate.

## **5. CONFIDENTIALITY, NON-DISCLOSURE AND INJUNCTIVE RELIEF**

**5.1 Confidentiality.** Contractor acknowledges that it and its employees or agents may, in the course of providing the Product under this Master Agreement, be exposed to or acquire information that is confidential to Participating Entity or Participating Entity's clients. Any and all information of any form that is marked as confidential or would by its nature be deemed confidential obtained by Contractor or its employees or agents in the performance of this Master Agreement, including, but not necessarily limited to (a) any Participating Entity records, (b) personnel records, and (c) information concerning individuals, is confidential information of Participating Entity ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated in the same manner as the Confidential Information. Confidential Information does not include information that (a) is or becomes (other than by disclosure by Contractor) publicly known; (b) is furnished by Participating Entity to others without restrictions similar to those imposed by this Master Agreement; (c) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Master Agreement; (d) is obtained from a source other than Participating Entity without the obligation of confidentiality, (e) is disclosed with the written consent of Participating Entity or; (f) is independently developed by employees, agents or subcontractors of Contractor who can be shown to have had no access to the Confidential Information.

**5.2 Non-Disclosure.** Contractor shall hold Confidential Information in confidence, using at least the industry standard of confidentiality, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the performance of this Master Agreement to Participating Entity hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use commercially reasonable efforts to assist Participating Entity in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Contractor shall advise Participating Entity immediately if Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Master Agreement and Contractor shall at its expense cooperate with Participating Entity in seeking injunctive or other equitable relief in the name of Participating Entity or Contractor against any such person. Except as directed by Participating Entity, Contractor will not at any time

during or after the term of this Master Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Master Agreement, and that upon termination of this Master Agreement or at Participating Entity's request, Contractor shall turn over to Participating Entity all documents, papers, and other matter in Contractor's possession that embody Confidential Information. Notwithstanding the foregoing, Contractor may keep one copy of such Confidential Information necessary for quality assurance, audits and evidence of the performance of this Master Agreement.

**5.3 Injunctive Relief.** Contractor acknowledges that breach of this Section, including disclosure of any Confidential Information, will cause irreparable injury to Participating Entity that is inadequately compensable in damages. Accordingly, Participating Entity may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Participating Entity and are reasonable in scope and content.

**6. DEBARMENT** The contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If the contractor cannot certify this statement, attach a written explanation for review by WSCA-NASPO.

## **7. DEFAULTS & REMEDIES**

a. The occurrence of any of the following events shall be an event of default under this Master Agreement:

- i. Nonperformance of contractual requirements; or
- ii. A material breach of any term or condition of this Master Agreement; or
- iii. Any representation or warranty by Contractor in response to the solicitation or in this Master Agreement proves to be untrue or materially misleading; or
- iv. Institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) calendar days after the institution or occurrence thereof; or
- v. Any default specified in another section of this Master Agreement.

b. Upon the occurrence of an event of default, Lead State shall issue a written notice of default, identifying the nature of the default, and providing a period of 15 calendar days in which Contractor shall have an opportunity to cure the default. The Lead State shall not be required to provide advance written notice or a cure period and may immediately terminate this Master Agreement in whole or in part if the Lead State, in its sole discretion, determines that it is reasonably necessary to preserve public safety or prevent immediate public crisis. Time allowed for cure shall not diminish or eliminate Contractor's liability for damages, including liquidated damages to the extent provided for under this Master Agreement.

c. If Contractor is afforded an opportunity to cure and fails to cure the default within the period specified in the written notice of default, Contractor shall be in breach of its

obligations under this Master Agreement and Lead State shall have the right to exercise any or all of the following remedies:

- i. Exercise any remedy provided by law; and
- ii. Terminate this Master Agreement and any related Contracts or portions thereof; and
- iii. Impose liquidated damages as provided in this Master Agreement; and
- iv. Suspend Contractor from receiving future bid solicitations; and
- v. Suspend Contractor's performance; and
- vi. Withhold payment until the default is remedied.

d. In the event of a default under a Participating Addendum, a Participating Entity shall provide a written notice of default as described in this section and have all of the rights and remedies under this paragraph regarding its participation in the Master Agreement, in addition to those set forth in its Participating Addendum.

**8. DELIVERY** Unless otherwise indicated in the Master Agreement, the prices are the delivered price to any Participating State agency or political subdivision. All deliveries shall be F.O.B. destination with all transportation and handling charges paid by the contractor. Responsibility and liability for loss or damage shall remain the Contractor until final inspection and acceptance when responsibility shall pass to the Buyer except as to latent defects, fraud and Contractor's warranty obligations. The minimum shipment amount will be found in the special terms and conditions. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an order to be shipped without transportation charges that is back ordered shall be shipped without charge.

**9. FORCE MAJEURE** Neither party to this Master Agreement shall be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. WSCA-NASPO may terminate this Master Agreement after determining such delay or default will reasonably prevent successful performance of the Master Agreement.

**10. GOVERNING LAW** This procurement and the resulting agreement shall be governed by and construed in accordance with the laws of the state sponsoring and administering the procurement. The construction and effect of any Participating Addendum or order against the Master Agreement(s) shall be governed by and construed in accordance with the laws of the Participating Entity's State. Venue for any claim, dispute or action concerning an order placed against the Master Agreement(s) or the effect of an Participating Addendum shall be in the Purchasing Entity's State.

**11. INDEMNIFICATION** The Contractor shall defend, indemnify and hold harmless WSCA-NASPO, the Lead State and Participating Entities along with their officers, agencies, and employees as well as any person or entity for which they may be liable from and against claims, damages or causes of action including reasonable attorneys' fees and related costs for any death, injury, or damage to property arising from act(s), error(s), or omission(s) of the Contractor, its employees or subcontractors or volunteers, at any tier, relating to the

performance under the Master Agreement. This section is not subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement

**12. INDEMNIFICATION - INTELLECTUAL PROPERTY** The Contractor shall defend, indemnify and hold harmless WSCA-NASPO, the Lead State and Participating Entities along with their officers, agencies, and employees as well as any person or entity for which they may be liable ("Indemnified Party") from and against claims, damages or causes of action including reasonable attorneys' fees and related costs arising out of the claim that the Product or its use, infringes Intellectual Property rights ("Intellectual Property Claim"). The Contractor's obligations under this section shall not extend to any combination of the Product with any other product, system or method, unless:

(1) the Product, system or method is:

(a) provided by the Contractor or the Contractor's subsidiaries or affiliates;

(b) specified by the Contractor to work with the Product; or

(c) reasonably required, in order to use the Product in its intended manner, and the infringement could not have been avoided by substituting another reasonably available product, system or method capable of performing the same function; or

(2) it would be reasonably expected to use the Product in combination with such product, system or method.

The Indemnified Party shall notify the Contractor within a reasonable time after receiving notice of an Intellectual Property Claim. Even if the Indemnified Party fails to provide reasonable notice, the Contractor shall not be relieved from its obligations unless the Contractor can demonstrate that it was prejudiced in defending the Intellectual Property Claim resulting in increased expenses or loss to the Contractor. If the Contractor promptly and reasonably investigates and defends any Intellectual Property Claim, it shall have control over the defense and settlement of it. However, the Indemnified Party must consent in writing for any money damages or obligations for which it may be responsible. The Indemnified Party shall furnish, at the Contractor's reasonable request and expense, information and assistance necessary for such defense. If the Contractor fails to vigorously pursue the defense or settlement of the Intellectual Property Claim, the Indemnified Party may assume the defense or settlement of it and the Contractor shall be liable for all costs and expenses, including reasonable attorneys' fees and related costs, incurred by the Indemnified Party in the pursuit of the Intellectual Property Claim. This section is not subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement.

**13. INDEPENDENT CONTRACTOR** The contractor shall be an independent contractor, and as such shall have no authorization, express or implied to bind WSCA-NASPO or the respective states to any agreements, settlements, liability or understanding whatsoever, and agrees not

to perform any acts as agent for WSCA-NASPO or the states, except as expressly set forth herein.

**14. INDIVIDUAL CUSTOMER** Except to the extent modified by a Participating Addendum, each Participating Entity shall follow the terms and conditions of the Master Agreement and applicable Participating Addendum and will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement, including but not limited to, any indemnity or to recover any costs allowed in the Master Agreement and applicable Participating Addendum for their purchases. Each Participating Entity will be responsible for its own charges, fees, and liabilities. The Contractor will apply the charges and invoice each Participating Entity individually.

**15. INSURANCE** Contractor shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the Participating Entity's state and having a rating of A-, Class VII or better, in the most recently published edition of Best's Reports. Failure to buy and maintain the required insurance may result in this Master Agreement's termination or at a Participating Entity's option, result in termination of its Participating Addendum.

Coverage shall be written on an occurrence basis. The minimum acceptable limits shall be as indicated below, with no deductible for each of the following categories:

- a) Commercial General Liability covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate;
- b) Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.

Contractor shall pay premiums on all insurance policies. Such policies shall also reference this Master Agreement and shall have a condition that they not be revoked by the insurer until thirty (30) calendar days after notice of intended revocation thereof shall have been given to Participating Entity by the Contractor.

Prior to commencement of the work, Contractor shall provide to the Participating Entity a written endorsement to the Contractor's general liability insurance policy that (i) names the Participating Entity as an additional insured, (ii) provides that no material alteration, cancellation, non-renewal, or expiration of the coverage contained in such policy shall have effect unless the named Participating Entity has been given at least thirty (30) days prior written notice, and (iii) provides that the Contractor's liability insurance policy shall be primary, with any liability insurance of the Participating Entity as secondary and noncontributory.

Contractor shall furnish to Participating Entity copies of certificates of all required insurance within thirty (30) calendar days of the Participating Addendum's effective date and prior to performing any work. Copies of renewal certificates of all required insurance shall be

furnished within thirty (30) days after renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this section. Failure to provide evidence of coverage may, at State's sole option, result in this Master Agreement's termination.

Coverage and limits shall not limit Contractor's liability and obligations under this Master Agreement.

**16. LAWS AND REGULATIONS** Any and all supplies, services and equipment offered and furnished shall comply fully with all applicable Federal and State laws and regulations.

**17. LICENSE OF PRE-EXISTING INTELLECTUAL PROPERTY** Contractor grants to the Participating Entity a nonexclusive, perpetual, royalty-free, irrevocable, unlimited license to publish, translate, reproduce, modify, deliver, perform, display, and dispose of the Intellectual Property, and its derivatives, used or delivered under this Master Agreement, but not created under it ("Pre-existing Intellectual Property"). The license shall be subject to any third party rights in the Pre-existing Intellectual Property. Contractor shall obtain, at its own expense, on behalf of the Participating Entity, written consent of the owner for the licensed Pre-existing Intellectual Property.

**18. NO WAIVER OF SOVEREIGN IMMUNITY** In no event shall this Master Agreement, any Participating Addendum or any contract or any purchase order issued thereunder, or any act of a Lead State or a Participating Entity, be a waiver by the Participating Entity of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.

If a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the Participating State. This section applies to a claim brought against the Participating State only to the extent Congress has appropriately abrogated the Participating State's sovereign immunity and is not consent by the Participating State to be sued in federal court. This section is also not a waiver by the Participating State of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

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**24. RECORDS ADMINISTRATION AND AUDIT** The contractor will maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the contractor for costs authorized by this Master Agreement. These records will be retained by the contractor for at least four years after the Master Agreement terminates, or until all audits initiated within the four years have been completed, whichever is later. The contractor agrees to allow WSCA-NASPO, State and Federal auditors, and state agency staff access to all the records of this Master Agreement and any order placed under this Master Agreement, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.

**25. REPORTS and ADMINISTRATIVE FEES** The contractor shall submit quarterly reports to the WSCA-NASPO Contract Administrator showing the quantities and dollar volume of purchases by each participating entity.

The contractor must pay a WSCA-NASPO administrative fee of one quarter of one percent (.25%) in accordance with the terms and conditions of the Master Agreement. The WSCA-NASPO administrative fee shall be submitted quarterly and is based on sales of products and services. The WSCA-NASPO administration fee is not negotiable. This fee is to be included as part of the pricing submitted with proposal.



Additionally, some States may require that an additional fee be paid directly to the State on purchases made by procuring entities within that State. For all such requests, the fee level, payment method and schedule for such reports and payments will be incorporated in a Participating Addendum that is made a part of the Master Agreement. The contractor may adjust the Master Agreement pricing accordingly for purchases made by procuring agencies within the jurisdiction of the State. All such agreements may not affect the WSCA-NASPO administrative fee or the prices paid by the procuring agencies outside the jurisdiction of the State requesting the additional fee.

**26. STANDARD OF PERFORMANCE AND ACCEPTANCE** The Standard of Performance applies to all Product(s) purchased under this Master Agreement, including any additional, replacement, or substitute Product(s) and any Product(s) which are modified by or with the written approval of Contractor after Acceptance by the Participating Entity. The Acceptance Testing period shall be thirty (30) calendar days or other time period identified in the solicitation or the Participating Addendum, starting from the day after the Product is installed and Contractor certifies that the Product is ready for Acceptance Testing. If the Product does not meet the Standard of Performance during the initial period of Acceptance Testing, Participating Entity may, at its discretion, continue Acceptance Testing on a day-to-day basis until the Standard of Performance is met. Upon rejection, the Contractor will have fifteen (15) calendar days to cure the Standard of Performance issue(s). If after the cure period, the Product still has not met the Standard of Performance Participating Entity may, at its option: (1) declare Contractor to be in breach and terminate the Order; (2) demand replacement Product from Contractor at no additional cost to Participating Entity; or, (3) continue the cure period for an additional time period agreed upon by the Participating Entity and the Contractor. Contractor shall pay all costs related to the preparation and shipping of Product returned pursuant to the section. No Product shall be accepted and no charges shall be paid until the Standard of Performance is met. The warranty period will begin upon Acceptance.

**27. SYSTEM FAILURE OR DAMAGE** In the event of system failure or damage caused by the Contractor or its Product, the Contractor agrees to use its best efforts to restore or assist in restoring the system to operational capacity.

**28. TITLE OF PRODUCT** Upon Acceptance by the Participating Entity, Contractor shall convey to Participating Entity title to the Product free and clear of all liens, encumbrances, or other security interests. Transfer of title to the Product shall include an irrevocable and perpetual license to use the Embedded Software in the Product. If Participating Entity subsequently transfers title of the Product to another entity, Participating Entity shall have the right to transfer the license to use the Embedded Software with the transfer of Product title. A subsequent transfer of this software license shall be at no additional cost or charge to either Participating Entity or Participating Entity's transferee.

**29. WAIVER OF BREACH** Failure of Lead State or Participating Entity to declare a default or enforce any rights and remedies shall not operate as a waiver under this Master Agreement or Participating Addendum. Any waiver by the Lead State or Participating Entity must be in writing. Waiver by the Lead State or Participating Entity of any default, right or remedy under this Master Agreement or Participating Addendum, or breach of any terms or requirements shall not be construed or operate as a waiver of any subsequent default or breach of such term or requirement, or of any other term or requirement under this Master Agreement or Participating Addendum.

**30. WARRANTY** The Contractor warrants for a period of one year from the date of Acceptance that: (a) the Product performs according to all specific claims that the Contractor made in its response to the solicitation, (b) the Product is suitable for the ordinary purposes for which such Product is used, (c) the Product is suitable for any special purposes identified in the solicitation or for which the Participating Entity has relied on the Contractor's skill or judgment, (d) the Product is designed and manufactured in a commercially reasonable manner, and (e) the Product is free of defects. Upon breach of the warranty, the Contractor will repair or replace (at no charge to the Participating Entity) the Product whose nonconformance is discovered and made known to the Contractor. If the repaired and/or replaced Product proves to be inadequate, or fails of its essential purpose, the Contractor will refund the full amount of any payments that have been made. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation, actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.

See Attachment D - Vendor RFP Response for warranty details.

**31. ASSIGNMENT OF ANTITRUST RIGHTS** Contractor irrevocably assigns to a Participating Entity any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of state or federal antitrust laws (15 U.S.C. § 1-15 or a Participating Entity's state antitrust provisions), as now in effect and as may be amended from time to time, in connection with any goods or services provided to the Contractor for the purpose of carrying out the Contractor's obligations under this Master Agreement or Participating Addendum, including, at a Participating Entity's option, the right to control any such litigation on such claim for relief or cause of action.

Contractor shall require any subcontractors hired to perform any of Contractor's obligations, under this Master Agreement or Participating Addendum, to irrevocably assign to a Participating Entity, as third party beneficiary, any right, title or interest that has accrued or which may accrue in the future by reason of any violation of state or federal antitrust laws (15 U.S.C. § 1-15 or a Participating Entity's state antitrust provisions), as now in effect and as may be amended from time to time, in connection with any goods or services provided to the subcontractor for the purpose of carrying out the subcontractor's obligations to the Contractor in pursuance of this Master Agreement or Participating Addendum, including, at a

Participating Entity's option, the right to control any such litigation on such claim for relief or cause of action.

**32. WSCA-NASPO eMARKET CENTER** Awarded responders are required to participate in the WSCA-NASPO eMarket Center and, working through WSCA-NASPO's contractor (SciQuest), connect with the eMarket Center. The ideal situation would be to use either a hosted (by SciQuest) or Punchout Level 2 catalog configurations, but actual requirements will be determined by the Lead State Contract Administrator, WSCA-NASPO, WSCA-NASPO's contractor (SciQuest) and the awarded contractor, after award. Participation does not require an awarded responder to have any special level of technology or technological understanding.

### **Definitions**

**Acceptance** - means a written notice from a purchasing entity to contractor advising Contractor that the Product has passed its Acceptance Testing. Acceptance of a product for which acceptance testing is not required shall occur following the completion of delivery, installation, if required, and a reasonable time for inspection of the product, unless the Purchasing Entity provides a written notice of rejection to contractor.

**Acceptance Testing** - means the process for ascertaining that the Product meets the standards set forth in the section titled Standard of Performance and Acceptance, prior to Acceptance by the Purchasing Entity.

**Contractor** - means the person or entity delivering Products or performing services under the terms and conditions set forth in this Master Agreement.

**Intellectual Property** - means any and all patents, copyrights, service marks, trademarks, trade secrets, trade names, patentable inventions, or other similar proprietary rights, in tangible or intangible form, and all rights, title, and interest therein.

**Lead State** - means the State conducting this cooperative solicitation and centrally administering any resulting Master Agreement with the permission of the Signatory States.

**Master Agreement** - means the underlying agreement executed by and between the Lead State, as WSCA-NASPO contract administrator, acting on behalf of WSCA-NASPO, and the Contractor, as now or hereafter amended.

**Order** - means any purchase order, sales order, or other document used by a Participating Entity to order the Products.

**Participating Addendum** - means a bilateral agreement executed by a Contractor and a Participating Entity incorporating this Master Agreement and any other additional Participating Entity specific language or other requirements ,e.g. ordering procedures specific to the Participating Entity, other terms and conditions.

**Participating Entity** - means a state, or other legal entity, properly authorized by a state to enter into the Master Agreement or Participating Addendum or who is authorized to order under the Master Agreement or Participating Addendum.

**Product** - Any equipment, software (including embedded software), documentation, or deliverable supplied or created by the Contractor pursuant to this Master Agreement.

**WSCA-NASPO** - is a cooperative group contracting consortium for state procurement officials, representing departments, institutions, agencies, and political subdivisions (i.e., colleges, school districts, counties, cities, etc.) for all states and the District of Columbia. WSCA-NASPO is a cooperative purchasing arm of the National Association of State Procurement Officials (NASPO).

#### **Additional Definitions and Alternative Terms for Consideration**

Below are additional definitions and alternative terms for consideration by the sourcing teams depending upon the nature of the solicitation and negotiations between the Contractor and Vendor.

**Embedded Software** - means one or more software applications which permanently reside on a computing device.

**Machine Code** - means microcode, basic input/output system code, utility programs, device drivers, diagnostics, and another code delivered with a computing device for the purpose of enabling the function of the computing device, as stated in its published specifications.

(revised March 2013)

**ATTACHMENT B:**  
**SHORETEL STATEMENT OF WORK**

**Categories authorized under this contract:**

**5.3.0 UNIFIED COMMUNICATIONS (UC)** — A set of products that provides a consistent unified user interface and user experience across multiple devices and media types. Unified Communications that is able to provide services such as session management, voice, video, messaging, mobility, and web conferencing. It can provide the foundation for advanced unified communications capabilities of IM and presence-based services and extends telephony features and capabilities to packet telephony network devices such as IP phones, media processing devices, Voice over IP (VoIP) gateways, and multimedia applications. Additional services, such as unified messaging, multimedia conferencing, collaborative contact centers, and interactive multimedia response systems, are made possible through open telephony APIs. General UC solution capabilities should include:

- High Availability for Call Processing
- Hardware Platform High Availability
- Network Connectivity High Availability
- Call Processing Redundancy

**5.3.0.1 IP Telephony** — Solutions utilized to provide the delivery of the telephony application (for example, call setup and teardown, and telephony features) over IP, instead of using circuit-switched or other modalities. Capabilities should include:

- Support for analog, digital, and IP endpoints

- Centralized Management

- Provide basic hunt group and call queuing capabilities

- Flexibility to configure queue depth and hold time, play unique announcements and Music on Hold (MoH), log in and log out users from a queue and basic queue statistics (from the phone)

- E911 Support

**5.3.0.2 Instant messaging/ Presence** — Solutions that allow communication over the Internet that offers quick transmission of text-based messages from sender to receiver. In push mode between two or more people using personal computers or other devices, along with shared clients, instant messaging basically offers real-time direct written language-based online chat. Instant messaging may also provide video calling, file sharing, PC-to-PC voice calling and PC-to-regular-phone calling.

**5.3.0.3 Unified messaging** — Integration of different electronic messaging and communications media (e-mail, SMS, Fax, voicemail, video messaging, etc.) technologies into a single interface, accessible from a variety of different devices.

- Ability to access and manage voice messages in a variety of ways, using email inbox, Web browser, desktop client, VoIP phone, or mobile phone

- Visual Voicemail Support (Optional)

**5.3.0.4 Contact Center** — A computer-based system that provides call and contact routing for high-volume telephony transactions, with specialist answering "agent" stations and a sophisticated real-time contact management system. The definition includes all contact center systems that provide inbound contact

handling capabilities and automatic contact distribution, combined with a high degree of sophistication in terms of dynamic contact traffic management.

**5.3.0.5 Communications End Points and Applications**

Attendant Consoles

IP Phones

**5.3.0.6 UC Network Management** — Provides end-to-end service management for Unified Communications. Capabilities include testing, performance monitoring, configuration management, and business intelligence reporting.

**5.3.0.7 Collaboration** — Voice, video, and web conferencing; messaging; mobile applications; and enterprise social software.

**5.3.0.8 Collaborative Video** — A set of immersive video technologies that enable people to feel or appear as if they were present in a location that they are not physically in. Immersive video consists of a multiple codec video system, where each meeting attendee uses an immersive video room to “dial in” and can see/talk to every other member on a screen (or screens) as if they were in the same room and provides call control that enables intelligent video bandwidth management.

**5.3.0.8.1 Content Delivery Systems (CDS)** — A large distributed system of servers deployed in multiple data centers connected by the Internet. The purpose of the content delivery system is to serve content to end-users with high availability and high performance. CDSs serve content over the Internet, including web objects (text, graphics, URLs, and scripts), downloadable objects (media files, software, documents), applications (e-commerce, portals), live streaming media, on-demand streaming media, and social networks.

**5.3.0.8.2 Physical Security** — Technology utilized to restricting physical access by unauthorized people to controlled facilities. Technologies include:

- a. Access control systems
- b. Detection/Identification systems, such as surveillance systems, closed circuit television cameras, or IP camera networks and the associated monitoring systems.
- c. Response systems such as alert systems, desktop monitoring systems, radios, mobile phones, IP phones, and digital signage
- d. Building and energy controls

**STATE OF UTAH CONTRACT NUMBER – AR627**

**Attachment C – Pricing  
Solicitation Number JP14001  
WSCA-NASPO Data Communications RFP**

**Vendor Name:** ShoreTel

**RFP Product Categories:**

**Minimum Discount Percentage:**

**5.3.0 UNIFIED COMMUNICATIONS (UC)**

**Discount % 35**

**Current ShoreTel Inc. pricing sheets, approved by the State of Utah, can be found at the following web link:**

**SHORETEL PRICING SHEETS CLICK HERE**

**IMPORTANT:** The minimum discount percentage listed in this attachment is for general informational purposes only and may not apply to every line item authorized under this contract. For specific item pricing, please refer to the contract price list weblink provided in this document.

Vendors are required to post state specific pricing on their hosted website or through the WSCA-NASPO eMarket center as required by solicitation JP14001, in addition to the vendor pricing sheets approved and hosted by the State of Utah's master contract summary sheet. The State of Utah vendor pricing sheets will serve as the approved base price and do not include any applicable state specific administrative fees. State specific pricing, hosted on the vendor website or WSCA-NASPO eMarketcenter may reflect authorized state specific administrative fees. No other fees are authorized under this contract. Pricing audits may be conducted at any time by the State of Utah, WSCA-NASPO, or 3<sup>rd</sup> party audit provider to ensure accurate pricing.

Per Solicitation JP14001, the following pricing/product requirements and instructions apply:

**1.11 Pricing Structure**

**Pricing Structure:** Pricing for the WSCA-NASPO Master Agreements shall be based on the Percent Discount off the current global MSRP Schedule applicable to United States customers.

**1.12 Price Guarantee Period**

**Price Guarantee Period:** The Data Communication Provider's Discount rate shall remain in effect for the term of the WSCA-NASPO Master Price Agreement.

**1.13 Price Escalation**

**Equipment, Supplies and Services:** Data Communications provider may update the pricing on their MSRP price list one time every year after the first year of the original contract term. The WSCA-NASPO Contract Administrator will review a documented request for a Price Schedule price list adjustment only after the Price Guarantee Period.

**1.14 Price Reductions**

In the event of a price decrease in any category of product at any time during the contract in a Provider's Price Schedule, including renewal options, the WSCA-NASPO Contract Administrator shall be notified immediately. All Price Schedule price reductions shall be effective upon the notification provided to the WSCA-NASPO Master Agreement Administrator.

#### **1.20 WSCA Administrative Fee**

The Contracted Supplier must pay a WSCA-NASPO administrative fee of one quarter of one percent (.025%) in accordance with the terms and conditions of the contract. The WSCA-NASPO administrative fee shall be submitted quarterly and is based on the actual sales of all products and services in conjunction with your quarterly reports. The WSCA-NASPO administrative fee must be included when determining the pricing offered. The WSCA-NASPO administrative fee is not negotiable and shall not be added as a separate line item on an invoice.

Additionally, some WSCA-NASPO participating entities may require that an administrative fee be paid directly to the WSCA-NASPO participating entity on purchases made by purchasing entities within that State. For all such requests, the fee percentage, payment method and payment schedule for the participating entity's administrative fee will be incorporated in the Participating Addendum. Data Communications Provider will be held harmless, and may adjust (increase) the WSCA-NASPO Master Agreement pricing by the fee percentage for that participating entity accordingly for purchases made by purchasing entities within the jurisdiction of the State. All such agreements may not affect the WSCA-NASPO fee or the prices paid by the purchasing entities outside the jurisdiction of the participating entities requesting the additional fee.

#### **5.3.2 ADDING PRODUCTS**

The ability to add new equipment and services is for the convenience and benefit of WSCA-NASPO, the Participating States, and all the Authorized Purchasers. The intent of this process is to promote "one-stop shopping" and convenience for the customers and equally important, to make the contract flexible in keeping up with rapid technological advances. The option to add new product or service categories and/items will expedite the delivery and implementation of new technology solutions for the benefit of the Authorized Purchasers.

After the contracts are awarded, additional IT product categories and/or items may be added per the request of the Contractor, a Participating State, an Authorized Purchaser or WSCA-NASPO. Additions may be ad hoc and temporary in nature or permanent. All additions to an awarded Contractor or Manufacturer's offerings must be products, services, software, or solutions that are commercially available at the time they are added to the contract award and fall within the original scope and intent of the RFP (i.e., converged technologies, value adds to manufacturer's solution offerings, etc.).

**5.3.2.1 New Product from Contractors** — If Contractor, a Participating State, an Authorized Purchaser or WSCA-NASPO itself requests to add new product categories permanently, then all awarded Contractors (Manufacturers) will be notified of the proposed change and will have the opportunity to work with WSCA to determine applicability, introduction, etc. Any new products or services must be reviewed and approved by the WSCA-NASPO Contract Administrator.

**5.3.2.2 Ad Hoc Product Additions** — A request for an ad hoc, temporary addition of a product category/item must be submitted to WSCA-NASPO via the governmental entity's contracting/purchasing officer. Ad hoc, temporary requests will be handled on a case-by-case basis.

**5.3.2.3 Pricelist Updates** — As part of each Contractor's ongoing updates to its pricelists throughout the contract term, Contractor can add new SKUs to its awarded product categories that may have been developed in-house or obtained through mergers, acquisitions or joint ventures; provided, however, that such new SKUs fall within the Contractor's awarded product categories.



**Xtelesis Corporation**

800 Airport Blvd

Phone: (650)239-1400 - Fax: 1-650-239-1410 - Email: kdogen@xtelesis.com



Date	Quote #
04/23/14	XTLQ14479

**Sold To:** City of Belmont  
 Bill Mitchell  
 One Twin Pines Lane  
 Belmont, CA 94002  
 United States

**Phone:** (650) 637-2970  
**Fax:**

**Ship To:** City of Belmont  
 Bill Mitchell  
 One Twin Pines Lane  
 Belmont, CA 94002  
 United States

**Phone:** (650) 637-2970  
**Fax:**

Terms	Rep	P.O. Number	Ship Via
Payment Upfront for everything but	kdogen		Ground

Ln #	Qty	Mfg. Part Number	Description	List Price	Disc Price	Ext. Price
1	125	630-1044	ShorePhone IP230g - Black (8.1 or later)	\$329.00	\$203.98	\$25,497.50
2	125	690-1047-01	Extension & Mailbox License	\$200.00	\$124.00	\$15,500.00
3	49	690-1052-01	Mailbox-only License (requires ShoreTel 5.2 or higher)	\$90.00	\$55.80	\$2,734.20
4	4	690-1014-01	Softphone License (7.5 and earlier versions)	\$150.00	\$93.00	\$372.00
5	4	630-1073	ShoreTel IP Phone 655 with anti-glare screen - (Requires ShoreTel 11.1 or later)	\$749.00	\$464.38	\$1,857.52
6	2	630-1082	Satellite microphones for ShoreTel IP Phone 655, Qty 2	\$195.00	\$120.90	\$241.80
7	1	620-1254	Starter Kit : IP930D DECT Phone US / Canada (Includes Base, Handset & Charger) - Requires ST 14 or later	\$599.00	\$371.38	\$371.38
8						
9			<b>TWIN PINES LANE (CH)</b>			
10	1	600-1069-10	ShoreGear T1k - 1U half width, Max Capacities - 1 T1, 0 IP phones, 0 Analog exts, 0 LS only trunks, 0 Universal ports. Digital trunk support only. Requires one Tray (SKU 10223) for every two units. (requires ShoreTel 8 or later)	\$3,495.00	\$2,166.90	\$2,166.90
11	1	600-1073	ShoreGear 24A - 1U full width, Max Capacities - 24 Analog extensions. No IP Phone or trunk support. (requires ShoreTel 8 or later)	\$2,995.00	\$1,856.90	\$1,856.90
12	2	600-1042	ShoreGear 90 - 1U half width, Max Capacities - 90 IP phones, 4 Analog exts, 8 LS trunks, 0 Universal ports. Not all maximum capacities can be reached at the same time. Requires one Tray (SKU 10223) for every two units.	\$2,995.00	\$1,856.90	\$3,713.80
13	1	FF220-GB/IE	Multi-Tech FaxFinder FF220 Fax Server - 2 Communication Lines - Analog	\$1,995.00	\$1,236.90	\$1,236.90
14	1	610-1122-01	Operator Access License	\$595.00	\$368.90	\$368.90
15	2	620-1057-02	Kit, rack mounting tray, for ShoreGear Switch 1U half width, holds two 1U half width switches	\$95.00	\$58.90	\$117.80
16	1	620-1119-01	Kit, Analog Harmonica & Telco 25PR (FF) Cable For ShoreGear 30, 50, 90 and 220T1A Switches	\$99.00	\$61.38	\$61.38

Ln #	Qty	Mfg. Part Number	Description	List Price	Disc Price	Ext. Price
17						
18			<b>TWIN PINES LANE (PD)</b>			
19	1	600-1042	ShoreGear 90 - 1U half width, Max Capacities - 90 IP phones, 4 Analog exts, 8 LS trunks, 0 Universal ports. Not all maximum capacities can be reached at the same time. Requires one Tray (SKU 10223) for every two units.	\$2,995.00	\$1,856.90	\$1,856.90
20	1	690-1058	Additional Site License	\$495.00	\$306.90	\$306.90
21	1	620-1057-02	Kit, rack mounting tray, for ShoreGear Switch 1U half width, holds two 1U half width switches	\$95.00	\$58.90	\$58.90
22	1	620-1119-01	Kit, Analog Harmonica & Telco 25PR (FF) Cable For ShoreGear 30, 50, 90 and 220T1A Switches	\$99.00	\$61.38	\$61.38
23						
24			<b>911 GRANADA STREET</b>			
25	1	600-1071	ShoreGear 30 - 1U half width, Max Capacities - 30 IP phones, 2 Analog exts, 2 LS trunks, 0 Universal ports. Not all maximum capacities can be reached at the same time. Requires one Tray (SKU 10223) for every two units. (requires ShoreTel 8 or later)	\$1,595.00	\$988.90	\$988.90
26	1	690-1058	Additional Site License	\$495.00	\$306.90	\$306.90
27	1	620-1057-02	Kit, rack mounting tray, for ShoreGear Switch 1U half width, holds two 1U half width switches	\$95.00	\$58.90	\$58.90
28	1	620-1119-01	Kit, Analog Harmonica & Telco 25PR (FF) Cable For ShoreGear 30, 50, 90 and 220T1A Switches	\$99.00	\$61.38	\$61.38
29						
30			<b>2701 CIPRIANI</b>			
31	1	600-1071	ShoreGear 30 - 1U half width, Max Capacities - 30 IP phones, 2 Analog exts, 2 LS trunks, 0 Universal ports. Not all maximum capacities can be reached at the same time. Requires one Tray (SKU 10223) for every two units. (requires ShoreTel 8 or later)	\$1,595.00	\$988.90	\$988.90
32	1	690-1058	Additional Site License	\$495.00	\$306.90	\$306.90
33	1	620-1057-02	Kit, rack mounting tray, for ShoreGear Switch 1U half width, holds two 1U half width switches	\$95.00	\$58.90	\$58.90
34	1	620-1119-01	Kit, Analog Harmonica & Telco 25PR (FF) Cable For ShoreGear 30, 50, 90 and 220T1A Switches	\$99.00	\$61.38	\$61.38
35						
36			<b>20 TWIN PINES LANE</b>			
37	1	600-1071	ShoreGear 30 - 1U half width, Max Capacities - 30 IP phones, 2 Analog exts, 2 LS trunks, 0 Universal ports. Not all maximum capacities can be reached at the same time. Requires one Tray (SKU 10223) for every two units. (requires ShoreTel 8 or later)	\$1,595.00	\$988.90	\$988.90
38	1	690-1058	Additional Site License	\$495.00	\$306.90	\$306.90
39	1	620-1057-02	Kit, rack mounting tray, for ShoreGear Switch 1U half width, holds two 1U half width switches	\$95.00	\$58.90	\$58.90
40	1	620-1119-01	Kit, Analog Harmonica & Telco 25PR (FF) Cable For ShoreGear 30, 50, 90 and 220T1A Switches	\$99.00	\$61.38	\$61.38
41						
42			<b>30 TWIN PINES</b>			
43	1	600-1071	ShoreGear 30 - 1U half width, Max Capacities - 30 IP phones, 2 Analog exts, 2 LS trunks, 0 Universal ports. Not all maximum capacities can	\$1,595.00	\$988.90	\$988.90



Ln #	Qty	Mfg. Part Number	Description	List Price	Disc Price	Ext. Price
			be reached at the same time. Requires one Tray (SKU 10223) for every two units. (requires ShoreTel 8 or later)			
44	1	690-1058	Additional Site License	\$495.00	\$306.90	\$306.90
45	1	620-1057-02	Kit, rack mounting tray, for ShoreGear Switch 1U half width, holds two 1U half width switches	\$95.00	\$58.90	\$58.90
46	1	620-1119-01	Kit, Analog Harmonica & Telco 25PR (FF) Cable For ShoreGear 30, 50, 90 and 220T1A Switches	\$99.00	\$61.38	\$61.38
47						
48		<b>110 SEM LANE (10 VOIP)</b>				
49	2	600-1071	ShoreGear 30 - 1U half width, Max Capacities - 30 IP phones, 2 Analog exts, 2 LS trunks, 0 Universal ports. Not all maximum capacities can be reached at the same time. Requires one Tray (SKU 10223) for every two units. (requires ShoreTel 8 or later)	\$1,595.00	\$988.90	\$1,977.80
50	2	690-1058	Additional Site License	\$495.00	\$306.90	\$613.80
51	2	620-1057-02	Kit, rack mounting tray, for ShoreGear Switch 1U half width, holds two 1U half width switches	\$95.00	\$58.90	\$117.80
52	2	620-1119-01	Kit, Analog Harmonica & Telco 25PR (FF) Cable For ShoreGear 30, 50, 90 and 220T1A Switches	\$99.00	\$61.38	\$122.76
53						
54		<b>550 Parkway</b>				
55	1	600-1071	ShoreGear 30 - 1U half width, Max Capacities - 30 IP phones, 2 Analog exts, 2 LS trunks, 0 Universal ports. Not all maximum capacities can be reached at the same time. Requires one Tray (SKU 10223) for every two units. (requires ShoreTel 8 or later)	\$1,595.00	\$988.90	\$988.90
56	1	690-1058	Additional Site License	\$495.00	\$306.90	\$306.90
57	1	620-1057-02	Kit, rack mounting tray, for ShoreGear Switch 1U half width, holds two 1U half width switches	\$95.00	\$58.90	\$58.90
58	1	620-1119-01	Kit, Analog Harmonica & Telco 25PR (FF) Cable For ShoreGear 30, 50, 90 and 220T1A Switches	\$99.00	\$61.38	\$61.38
59						
60	1	XTL-PREMIUM 5 YEAR 2014	Xtelesis Premium ShoreTel Support - 5 Year 2014. Does not include Phones which is optional. See Attached Support Matrix for details	\$31,052.00	\$31,052.00	\$31,052.00
61	1	XTL-SHORETEL-INST-MS	Xtelesis Installation of Multi-Site ShoreTel System Does not include setting up phones, which customer will handle internally	\$13,750.00	\$13,750.00	\$13,750.00
62	1	XTL-SHORETEL-ADMT RN	ShoreTel Administrator Training - Up to 4 People per Session	\$495.00	\$495.00	\$495.00
63	12	XTL-SHORETEL-GRPT RN	ShoreTel Group Training. Single 1 1/2 Hour Class, up to 8 students.	\$225.00	\$225.00	\$2,700.00

Sub Total	\$116,290.62
Estimated Sales Tax	\$4,217.70
Shipping	\$0.00
<b>Total</b>	<b>\$120,508.32</b>

The person signing below has the requisite authority to execute this binding sales order on behalf of the Customer whose name appears below. Customer agrees to all of Sales Order Standard Terms and Conditions as set forth on Xtelesis' WEB site at [www.xtelesis.com/termsandconditions.php](http://www.xtelesis.com/termsandconditions.php) and acknowledges that such terms and conditions can only be changed by an Xtelesis Corporation Modification to Terms and Conditions, any such modification requiring the signature of an Officer of Xtelesis Corporation. Actual Shipping costs and Sales Tax will be added to the final invoice. QUOTES ARE NOT FINAL UNTIL AN XTELESIS DESIGN REVIEW HAS TAKEN PLACE. (JD-071309)

Customer Name: \_\_\_\_\_

Signed By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## ShoreTel Support 2014



**Xtelesis**   
Do more with your network.

Service Levels	Premium		Preferred	
Response Time to System Down	Normal Bus. Hrs. 30 minutes	All Other Times 2 hours	Normal Bus. Hrs. 1 hour	All Other Times 4 hours
Response Time to Non-Critical Issue	Normal Bus. Hrs. 2 hours	All Other Times 4 hours	Normal Bus. Hrs. 4 hours	All Other Times 8 hours
Response time to case opened via email	Normal Bus. Hrs. 2 hours	All Other Times 4 hours	Normal Bus. Hrs. 4 hours	All Other Times 8 hours
Hardware Replacement	Advanced replacement 4 hours		Advanced replacement, next business day	
Other Support Items	Premium		Preferred	
ShoreTel Software	Yes		Yes	
Xtelesis performed software upgrades	Unlimited		2 / year	
Authorized Contacts	Trained / Designated		Trained / Designated	
Guaranteed Live Answer of Support Hotline During Business Hours	Yes		No	
Personal phone number for support	Yes		No	
Remote System Health Checks	2 / year		1 / year	
Technical Account Manager (TAM)	Yes		\$3,000/quarter	
System Down Support	Included		Included	
Standard Break / Fix Support	Included		Included	
Standard MACD (Moves, Adds, Changes and Deletions)	Included		Included	
Onsite Support when required	Included		\$150/hour, 2 hour minimum	
Network Troubleshooting	Included when network infrastructure has been purchased from Xtelesis.		Included when network infrastructure has been purchased from Xtelesis.	
Assistance with Carrier Trouble Shooting	Included		Included when carrier services have been purchased from Xtelesis.	
Price (as % of total list price of product in production) *Discounts apply only when paid in advance for the full term.	12 Month: 18% 36 Month: 16% 60 Month: 14%		12 Month: 12% 36 Month: 11% 60 Month: 10%	
Coverage on Phones	5%		5%	

**Attachments**

- A. Resolution
- B. Amendment #2 Scope of Work

**Fiscal Impact**

- ☐ No Impact/Not Applicable
- ☒ Funding Source Confirmed: FY 2013/2014 Budget, Account 234-3-730-3208-9030/Street Improvements

**Source:**

- ☐ Council
- ☒ Staff
- ☐ Citizen Initiated
- ☐ Other\*

**Purpose:**

- ☐ Statutory/Contractual Requirement
- ☒ Council Vision/Priority
- ☐ Discretionary Action
- ☐ Plan Implementation\*

**Public Outreach:**

- ☒ Posting of Agenda
- ☐ Other\*

## **RESOLUTION NO. 2014-**

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BELMONT APPROVING AMENDMENT #2 WITH WHITLOCK AND WEINBERGER TRANSPORTATION, INC. FOR AN AMOUNT NOT TO EXCEED \$14,000 FOR ADDITIONAL SCOPE OF WORK NOT INCLUDED IN THE RALSTON AVENUE CORRIDOR STUDY AND IMPROVEMENTS PROJECT**

---

WHEREAS, on February 12, 2013, City Council approved a Professional Services Agreement with Whitlock and Weinberger Transportation, Inc. for an amount not to exceed \$141,035 and authorized \$8,965 contingency; and,

WHEREAS, on April 8, 2014, City Council approved Amendment #1 for an amount not to exceed \$8,965 using the approved contingency; and,

WHEREAS, an Amendment #2 in the amount of \$14,000 is required for the additional scope of work not covered under the original scope of work or Amendment #1; and,

WHEREAS, funds for the additional work will be allocated from Account Number 234-3-730-3208-9030/Street Improvements.

NOW, THEREFORE, the City Council of the City of Belmont resolves as follows:

SECTION 1. The City Manager is authorized to approve Amendment #2 to the Professional Services Agreement with Whitlock and Weinberger Transportation, Inc. for an amount not to exceed \$14,000 for additional scope of work not included in the Ralston Avenue Corridor Study and Improvements Project.

\* \* \*

ADOPTED May 13, 2014, by the City of Belmont City Council by the following vote:

Ayes:

Noes:

Absent:

Abstain:

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney





## **ATTACHMENT B AMENDMENT #2 SCOPE OF WORK**

**Whitlock & Weinberger  
Transportation, Inc.**

April 29, 2014

Ms. Bozhena Palatnik  
Associate Civil Engineer  
City of Belmont Public Works  
One Twin Pines Lane, Suite 385  
Belmont, CA 94002

475 14<sup>th</sup> Street  
Suite 290  
Oakland, CA 94612

voice 510.444.2600  
web [www.w-trans.com](http://www.w-trans.com)

### **Request for Purchase Order for the 4<sup>th</sup> Community Workshop and ATP Grant Application Assistance for the Ralston Avenue Corridor Study Project**

Dear Ms. Palatnik;

This letter is a request for a Purchase Order for \$14,000 to cover a fourth Community Workshop and assistance in filing out an Active Transportation Program (ATP) Grant Application for the Ralston Avenue Corridor Study. Our current contract ceiling for the Ralston Avenue project is \$150,000, all of which has been allocated to other tasks. Therefore, a separate Purchase Order is being requested.

The fourth community workshop, to be held on May 21, 2014, was requested by the City Council following the study session held on April 8, 2014. The estimated fee for the fourth community workshop is \$5,990. This includes time for meeting preparation, creation of a workshop flyer including posting and sending of the flyer, attendance at the workshop, and preparation of summary notes after the workshop.

The estimated fee for the ATP Grant Application assistance is \$8,010. Using information from the Ralston Avenue Corridor Study working papers and plan, W-Trans will be responsible for the following parts of the application, to be submitted to the City by May 14, 2014:

Part II – Project Information

Part III – Screening Criteria

Part IV – Narrative Questions Q1-Q8

The City of Belmont will be responsible for filling out all other parts of the ATP Grant Application, including:

Part I - General Information

Part V - Project Programming Request

Part VI - Additional Information

Part VII - Non-Infrastructure Schedule Information

Part VIII - Application Signatures and Attachments

The City of Belmont will be responsible for assembling the ATP Grant Application and submitting the application by May 21, 2014,



The attached budget table shows the breakdown of hours and costs for both tasks, with a total request for \$14,000.

We respectfully ask that you approve this Purchase Order request. We look forward to continuing our work with you.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Spencer". The signature is fluid and cursive, with the first name "Mark" being more prominent than the last name "Spencer".

Mark Spencer, PE  
Principal

## Ralston Ave Corridor Study - 4th Workshop and ATP Grant Application Assistance W-Trans Fee Estimate

Task	HOURS BY STAFF MEMBER					Miles	Other Direct Costs	Total Hours
	Steve Weinberger	Mark Spencer	Tony Henderson	Jennifer Donlon-Wyant (ALTA)	Admin			
1. 4th Community Workshop	6	9	8	9	0	0	410	32
2. ATP Grant Application Assistance	4	16	28	0	6	0	0	54
	10	25	36	9	6	0	\$410	86

Task	FEE AT HOURLY RATES INDICATED					\$0.61	Costs	TOTAL
	\$215	\$205	\$120	\$165	\$85			
1. 4th Community Workshop	\$1,290	\$1,845	\$960	\$1,485	\$0	\$0	\$410	\$5,990
2. ATP Grant Application Assistance	\$860	\$3,280	\$3,360	\$0	\$510	\$0	\$0	\$8,010
	\$2,150	\$5,125	\$4,320	\$1,485	\$510	\$0	\$410	\$14,000



# STAFF REPORT

Meeting Date: May 13, 2014

Agenda Item #8E

**Agency:** City of Belmont

**Staff Contact:** Tim Murray, Public Works, [tmurray@belmont.gov](mailto:tmurray@belmont.gov), (650) 637-2932

**Agenda Title:** Authorizing the Renewal of a Three Year Service Agreement with Mission Communication, LLC, a Sole Provider, for Supervisory Control and Data Acquisition (SCADA) Communication for the Sewer and Storm Pump Stations for an Amount not to Exceed \$32,373

**Agenda Action:** Resolution

---

## **Recommendation**

Authorizing the City Manager to renew a three year service agreement with Mission Communication, LLC, to provide supervisory control and data acquisition communication for the City's sewer and storm pump stations.

## **Background**

The City of Belmont has 11 sanitary sewer pump stations located in various parts of the City. The San Juan Pump Station, which has the largest sewer flow volumes, North Road, Hiller, Hastings, Haskins, Ralston Ranch, Island Park, Naughton, Motel 6 on Sem Lane, El Camino Real, and Island Park Ball Field Pump Station. The City also maintains two storm pump stations, the Ralston Avenue and Harbor Boulevard Pump Stations.

The 13 pump stations are connected to a Mission Communication Supervisory Control and Data Acquisition (SCADA) System at the Corporation Yard. Presently, four sewer pump stations communicate "real time" data. The remaining seven stations communicate hourly updates. The pump station alarms/messages are sent through the SCADA system and received by the on-call staff. These alarms/messages can also be accessed through the Mission Communication website or via email.

The alarms sent by the SCADA system identify problems at the pump stations such as, power failure/outage, on/off status of generator, the flow rate, pump condition, on/off of the pump, pump runtime, and ultrasonic or float control of the pump station. The alarm notification allows staff to respond to the alarm site to investigate and correct the cause of the alarm.

## **Analysis**

The existing agreement with Mission Communication, LLC, expires June 30, 2014. Renewal of the agreement will provide uninterrupted service to the pump stations, minimizing the risk of sanitary sewer overflows and stormwater pump station failures. As part of this renewal contract the remaining seven pump stations, which have hourly SCADA readings, are being upgraded to provide "real time" reporting of alarms and data. All other terms and conditions will remain the same as the previous agreement.

**Alternatives**

1. Deny resolution
2. Refer back to staff for further information

**Attachments**

- A. Resolution

**Fiscal Impact**

- ☐ No Impact/Not Applicable
- ☒ Funding Source Confirmed: Sewer Operations Account 501-3-710-8530/Communications &  
Storm Drain Operations Account 525-3-720-8530/Communications

**Source:**

- ☐ Council
- ☒ Staff
- ☐ Citizen Initiated
- ☐ Other\*

**Purpose:**

- ☒ Statutory/Contractual Requirement
- ☐ Council Vision/Priority
- ☐ Discretionary Action
- ☐ Plan Implementation\*

**Public Outreach:**

- ☒ Posting of Agenda
- ☐ Other\*

\*

## RESOLUTION NO. 2014-

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BELMONT AUTHORIZING THE RENEWAL OF A THREE YEAR SERVICE AGREEMENT WITH MISSION COMMUNICATION, LLC, A SOLE PROVIDER, FOR SUPERVISORY CONTROL AND DATA ACQUISITION (SCADA) COMMUNICATION, FOR THE SEWER AND STORM PUMP STATIONS FOR AMOUNT NOT TO EXCEED \$32,373**

---

WHEREAS, the City of Belmont has eleven sewer pump stations and two storm pump stations that are connected to a Mission Communication Supervisory Control and Data Acquisition (SCADA) System; and,

WHEREAS, renewing the agreement will provide uninterrupted service to the pump stations, minimizing the risk of sanitary sewer overflows; and,

WHEREAS, the funding for this service agreement is allocated in the FY 2013-2014 budget Sewer Division Account No. 501-3-710-8530/Communications, and Storm Division Account No. 525-3-720-8530/Communications.

NOW, THEREFORE, the City Council of the City of Belmont resolves as follows:

SECTION 1. The City Manager is authorized to execute a service agreement for the renewal of the SCADA services under the terms and conditions with Mission Communications, LLC, for an amount not to exceed \$32,373.

\* \* \*

ADOPTED May 13, 2014, by the City of Belmont City Council by the following vote:

Ayes:

Noes:

Absent:

Abstain:

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney



# STAFF REPORT

Meeting Date: May 13, 2014

Agenda Item #8F

**Agency:** City of Belmont

**Staff Contact:** Jonathan Gervais, Parks and Recreation Department, jgervais@belmont.gov

**Agenda Title:** Resolution of the City Council Authorizing a Purchase Order for Engineered Wood Fiber from Jetmulch Company for an Amount not to Exceed \$10,000

**Agenda Action:** Resolution

---

## **Recommendation**

Staff recommends the City Council authorize a Purchase Order for Engineered Wood Fiber from Jetmulch Company in an amount not to exceed Ten Thousand dollars (\$10,000).

## **Background**

The City owns and maintains play structures at numerous City parks. The National Playground Safety Institute requires adequate impact absorbing materials within a fall zone of play structures. Engineered wood fiber is an approved product that meets the standards which must be maintained at a minimum depth of twelve inches. During recent playground inspections, staff observed that additional play fiber is needed at various playgrounds.

The City has play structures with engineered wood fiber at Twin Pines Park, Belameda Park, Cipriani Tot Lot, College View Park, Barrett Community Center, Hastings Park, O'Donnell Park, Alexander Park, Hallmark Park and the Sports Complex. Staff has estimated that 225 cubic yards of engineered wood fiber is needed to adequately fill the play areas at these sites.

## **Analysis**

The project includes the installation of engineered wood fiber to numerous City parks to meet the minimum depth of impact absorbing material required within a play structures fall zone. The wood fiber material gets displaced, decomposes over time from use, friction and exposure to the elements.

The material is delivered in 75 yard truckloads and is blown in and around play structures. The City has been maintaining play areas in this manner for many years.

## **Alternatives**

1. Take no action.
2. Refer back to staff for further information.

## **Attachments**

- A. Resolution

**Fiscal Impact**

- ☐ No Impact/Not Applicable  
☒ Funding Source Confirmed: 101-Parks and Open Space

**Source:**

- ☐ Council  
☒ Staff  
☐ Citizen Initiated  
☐ Other\*

**Purpose:**

- ☒ Statutory/Contractual Requirement  
☐ Council Vision/Priority  
☐ Discretionary Action  
☐ Plan Implementation\*

**Public Outreach:**

- ☒ Posting of Agenda  
☐ Other\*

**RESOLUTION NO. 2014-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BELMONT  
AUTHORIZING A PURCHASE ORDER WITH JETMULCH COMPANY FOR THE  
INSTALLATION OF ENGINEERED WOOD FIBER AT CITY PLAYGROUNDS IN AN  
AMOUNT NOT TO EXCEED TEN THOUSAND DOLLARS (\$10,000)**

---

WHEREAS, impact absorbing material is required in fall zones of play areas; and,

WHEREAS, engineered wood fiber meets the standards of playground surfacing; and,

WHEREAS, recent playground inspections determined the need for additional play fiber material at numerous City playgrounds: and,

WHEREAS, Fund 101, Parks and Open Space has sufficient funds.

NOW, THEREFORE, the City Council of the City of Belmont resolves as follows:

**SECTION 1. AUTHORIZE THE PURCHASE ORDER FOR ENGINEERED WOOD  
FIBER AT CITY PLAYGROUNDS FROM JETMULCH COMPANY IN AN AMOUNT NOT  
TO EXCEED TEN THOUSAND DOLLARS (\$10,000).**

\* \* \*

ADOPTED May 13, 2014, by the City of Belmont City Council by the following vote:

Ayes:

Noes:

Absent:

Abstain:

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney





# STAFF REPORT

Meeting Date: May 13, 2014

Agenda Item #8G

**Agency:** City of Belmont

**Staff Contact:** Cheri Handley, Recreation Supervisor, 650.595.7445, chandley@belmont.gov

**Agenda Title:** Resolution of the City Council Authorizing the Purchase of Furniture for the Twin Pines Senior and Community Center in an Amount Not to Exceed \$40,000

**Agenda Action:** Resolution

---

## **Recommendation**

Staff recommends the City Council authorize the City Manager to approve the purchase of furniture for the Twin Pines Senior and Community Center for an amount not to exceed \$40,000.

## **Background**

The Twin Pines Senior and Community Center Improvement project began in October 2013 and was completed in January 2014. This twenty seven year old facility now has a new, fresh look with interior and exterior paint, new flooring, ceiling tiles and a custom built receptionist desk. The furniture in the front lobby and game room is dated, worn, mismatched and does not compliment the updated look of the facility. The Twin Pines Senior and Community Center is a vital part of the community, providing programs and services to persons of all ages; serving individuals, community groups and private rental events. Replacement of the lobby and game room furniture would enhance the center for years to come.

## **Analysis**

The Belmont Senior Citizen's Advisory Committee has reviewed the options for furnishing the Twin Pines Senior and Community Center and recommends replacement of the existing furniture in the game room and lobby. Various options have been considered, with a commercial grade product upholstered in health care grade fabric deemed the best match for the intents and purposes of the proposed furniture which carries a lifetime warranty. Funding for the project includes up to \$20,000 of funds remaining in the Twin Pines Senior and Community Center Facility Update Project and the Belmont Senior Citizen's Advisory Committee has approved a matching expenditure of up to \$20,000 from The Senior Fund. The total amount of funding available is \$40,000. Furnishings for the game room and lobby are described below:

### **LOBBY**

Two three seat sofas  
Round conversation table  
Eight Chairs  
Two end tables

### **GAME ROOM**

Two lounge Chairs  
One end table

Three round multipurpose tables  
Fifteen stackable chairs  
One coffee table  
Four coffee table chairs

**Alternatives**

1. Refer to staff for further information
2. Take no action

**Attachments**

- A. Resolution of the City Council authorizing the City Manager to approve the purchase of furniture for the Twin Pines Senior and Community Center in an amount not to exceed \$40,000.

**Fiscal Impact**

- ☐ No Impact/Not Applicable  
☒ Funding Source Confirmed: Twin Pines Senior and Community Center Facility Improvement Fund 308-802-9030 for \$20,000 and The Senior Fund 205-0-000-3956 for \$20,000.
- 

**Source:**

- ☐ Council  
☒ Staff  
☐ Citizen Initiated  
☐ Other\*

**Purpose:**

- ☐ Statutory/Contractual Requirement  
☐ Vision/Priority Calendar  
☒ Discretionary Action  
☐ Plan Implementation\*

**Public Outreach:**

- ☒ Posting of Agenda  
☐ Other\*

\*

## RESOLUTION NO. 2014-

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BELMONT AUTHORIZING THE PURCHASE OF FURNITURE FOR THE TWIN PINES SENIOR AND COMMUNITY CENTER IN AN AMOUNT NOT TO EXCEED \$40,000**

---

WHEREAS, the Twin Pines Senior and Community Center is a vital part of the community, providing programs and services to persons of all ages; serving individuals, community groups and private rental events; and,

WHEREAS, the Twin Pines Senior and Community Center is twenty seven years old; and a facility improvement project was completed in January 2014; and,

WHEREAS, furniture in the facility is worn, mismatched and does not compliment the updated look of the facility; and,

WHEREAS, matching funds from the Twin Pines Senior and Community Facility Improvement Project and The Senior Fund to replace furniture in the lobby and game room totaling \$40,000 have been secured and the Belmont Senior Citizen's Advisory Committee recommends the purchase of new furniture.

NOW, THEREFORE, the City Council of the City of Belmont resolves as follows:

SECTION 1. To authorize the City Manager to purchase furniture for the Twin Pines Senior and Community Center lobby and game room in an amount not to exceed \$40,000.

\* \* \*

ADOPTED May 13, 2014, by the City of Belmont City Council by the following vote:

Ayes:

Noes:

Absent:

Abstain:

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney



# STAFF REPORT

Meeting Date: May 13, 2014

Agenda Item #8-H

**Agency:** City of Belmont

**Staff Contact:** Thomas Fil, Finance Department, (650) 595-7435 tfil@belmont.gov

**Agenda Title:** Resolution of the City Council Approving a Service Agreement with Stifel, Nicolaus & Company, Inc. to Perform Services as Financial Advisor

**Agenda Action:** Resolution

---

## **Recommendation**

It is recommended that the City Council approve the attached resolution authorizing the City Manager to execute a Service Agreement with Stifel, Nicolaus & Company, Inc. to perform services for the City of Belmont as financial advisor.

## **Background**

From time to time the City has need of financial advisory services related to issuing bonds that are highly technical and require the services of a financial advisor with specialized expertise.

Magis Advisors has served as the City's financial advisor for over a decade and has provided superior service during that time. However, staff recently received notice that the Magis office is closing, effective April 30, 2014.

## **Analysis**

In response to the notice from Magis, staff requested proposals from several financial advisory firms detailing their qualifications. After narrowing down the firms, a selection team, consisting of the City Manager, City Treasurer and Finance Director performed interviews and reference checks on the finalists.

The selection team wishes to engage Stifel, Nicolaus & Company, Inc. for financial advisory services.

Approval of this action will authorize the procurement of financial advisory services, on an as needed basis, from Stifel, Nicolaus & Company, Inc. at the rates set forth in Section 5 of Attachment B accompanying this report, and contingent upon the availability of existing funds.

## **Alternatives**

1. Deny the requested authority.
2. Continue the item for further discussion.

## **Attachments**

- A. Implementing Resolution
- B. Stifel, Nicolaus & Company, Inc. Proposal

**Fiscal Impact**

- ☐ No Impact/Not Applicable  
☒ Funding Source Confirmed:

Financial advisory services rendered in the process of issuing a bond are a component of what is called “bond issuance cost”. Payment of bond issuance costs are typically contingent upon the issuance of the bonds and are routinely paid from bond proceeds. As a result, they generally will not have a direct financial impact on the City’s fund balance reserves or require the use of revenues earmarked for other services. For other matters, the authorization for procurement of financial advisory services requested is limited to the amount of available funds appropriated within the fiscal year budget for that purpose.

The timing of debt issues is predicated on many factors and, as a consequence, the fiscal year budget as originally adopted, may need to be amended to reflect a particular bond issuance. If not originally appropriated in the fiscal year budget, staff will request an amendment contemporaneous with the approval of the debt issue to provide appropriation authority for this purpose.

**Source:**

- ☐ Council  
☒ Staff  
☐ Citizen Initiated  
☐ Other\*

**Purpose:**

- ☐ Statutory/Contractual Requirement  
☐ Council Vision/Priority  
☒ Discretionary Action  
☐ Plan Implementation\*

**Public Outreach:**

- ☒ Posting of Agenda  
☐ Other

## **RESOLUTION NO. 2014-**

### **RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BELMONT APPROVING A SERVICE AGREEMENT WITH STIFEL, NICOLAUS & COMPANY, INC. TO PERFORM SERVICES AS FINANCIAL ADVISOR**

WHEREAS, from time to time the City has need of financial advisory services related to bond issuance and other matters; and,

WHEREAS, the financial advisory firm Stifel, Nicolaus & Company, Inc. has demonstrated expertise in this field; and,

WHEREAS, Stifel, Nicolaus & Company, Inc. responded to the City's request for a proposal to provide such services; and,

WHEREAS, staff recommends authorization of a Professional Services Agreement with Stifel, Nicolaus & Company, Inc. to provide financial advisory services at the rates set forth in Section 5 of Attachment B;

NOW, THEREFORE, the City Council of the City of Belmont resolves as follows:

SECTION 1. The City Manager is authorized to negotiate and execute an agreement purchasing financial advisor services from Stifel, Nicolaus & Company, Inc. at the rates set forth in Section 5 of Attachment B. This authorization is limited to the amount of available funds appropriated within a fiscal year budget for that purpose.

\* \* \*

ADOPTED May 13, 2014, by the City of Belmont City Council by the following vote:

Ayes:

Noes:

Absent:

Abstain:

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

# CITY OF BELMONT

## PROPOSAL TO PROVIDE FINANCIAL ADVISORY SERVICES

MAY 6, 2014

Stifel Contact:

**Sohail Bengali, Managing Director**

One Montgomery Street, 35<sup>th</sup> floor — San Francisco, California 94104

Phone: (415) 364-6836 — Email: [sbengali@stifel.com](mailto:sbengali@stifel.com)

# STIFEL

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## 1. FIRM OVERVIEW

**Stifel, Nicolaus & Company, Incorporated:** Stifel, Nicolaus & Company, Incorporated ("Stifel"), a wholly owned subsidiary of Stifel Financial Corp., is a full-service investment banking firm established in 1890. The company provides advisory, investment banking, trading, underwriting, and related financial services. Stifel Financial is a publicly traded firm listed on the New York Stock Exchange under the stock ticker "SF". Our public finance department represents 106 bankers and advisors, 33 of whom are based in California.

Stone & Youngberg LLC ("Stone & Youngberg"), established in California in 1931, was acquired by Stifel Financial Corp. in October 2011. Stone & Youngberg's long-time bankers, underwriters and sales staff transitioned to Stifel and continue to serve our local public agency clients and provide financial services from offices located in California.

In January 2014, Stifel announced its further expansion into California municipal finance with the acquisition of De La Rosa & Co. ("DLR"), which became effective on April 1, 2014.

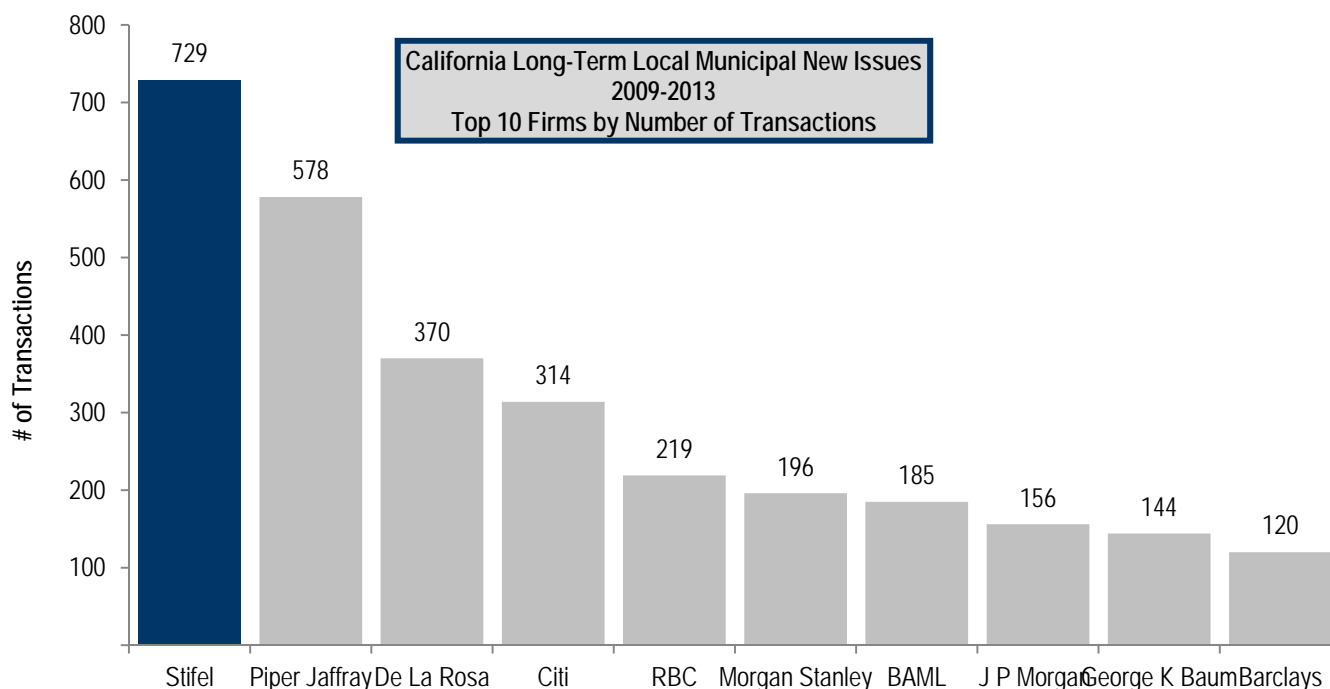
**Staffing and Distribution Overview:** Stifel has over 6,000 employees located in major financial centers across North America, Europe and Asia. Our U.S. public finance team has over 106 professionals throughout the nation. The recent mergers with Stone & Youngberg and DLR were an important element of the nationwide expansion of our public finance platform into California. An overview of Stifel's public finance department staffing by office location is shown in the adjacent table. The public finance team member, Sohail Bengali, who will manage our work for the City, is based in our office in San Francisco at One Montgomery Street.

As part of our comprehensive advisory services, we provide on-time capital market information, and viable debt structuring solutions based on investor and market knowledge of the leading distribution network in the municipal industry. Our financial advisory services will be backed by the working knowledge of capital markets information based on feedback from local retail investors who live on the Peninsula, in the greater San Francisco Bay Area as well as investors residing elsewhere in California and institutions located across the country.

Public Finance Banker Staffing			
Annapolis, MD	2	Houston, TX	1
Atlanta, GA	3	<b>Los Angeles, CA</b>	<b>15</b>
Austin, TX	1	New York, NY	3
Bloomington, IL	1	Okemos, MI	3
Boston, MA	1	Orlando, FL	3
Brookfield, WI	1	Phoenix, AZ	10
Chicago, IL	5	San Antonio, TX	3
Cleveland, OH	5	<b>San Francisco, CA</b>	<b>18</b>
Columbus, OH	4	St. Louis, MO	16
Denver, CO	10	Wichita, KS	1
Underwriting Staffing			
Denver, CO	2	<b>San Francisco, CA</b>	<b>2</b>
<b>Los Angeles, CA</b>	<b>2</b>	St. Louis, MO	3

## 2. EXPERIENCE

Stifel is the leading banker to California municipal issuers (both as advisor or underwriter), and over the past 5 years we have completed 729 bond transactions (well ahead of many of our competitors). This depth and range of municipal debt structuring and pricing track record allows us to advise the City on borrowing programs, credit analyses, structuring options, and market reception.



Our experience spans the range of debt financing structures used in California, from lease (COPs), wastewater/water revenue bonds, storm drainage programs, tax increment, general obligation financings, parcel tax and land-secured special tax and assessment bonds to short term borrowing instruments (bond anticipation notes, variable rate programs and grant secured financings). Our recent financing engagements on the Peninsula, in the San Francisco Bay area have included the following:

- Water revenue Bonds, Lease, Tax Increment Financings – City of Mountain View
- Water/Wastewater/Storm Drainage bonds, Leases, Utility Bonds, Assessment Bonds – City of Palo Alto
- Wastewater/Water System Bonds – City of Hillsborough
- Lease COPs, Assessment Bonds, Tax Increment Bonds – City of Campbell
- Wastewater Bonds, Tax Increment Financings, Special Tax Bonds – City of San Mateo

In particular, Mr. Sohail Bengali was the primary banker/advisor for all of these clients listed above.

### 3. CASE STUDIES

A few case studies of projects that Mr. Bengali has recently completed are highlighted below. These projects are similar to some of the issues facing the City.



#### **\$9,700,000 City of Mountain View, Water Revenue Bonds (Graham Reservoir)**

Mr. Bengali worked with the finance team to structure the first ever issuance of a water revenue enterprise financing for the City of Mountain View. As a new financing template, many of the debt covenants, borrowing terms, rate structures, coverage ratio analysis, additional bonds tests and flow of funds had to be crafted. A thorough analysis was completed of similar credits in the Bay Area, taking into account the unique aspects of the local economy, the resources available to the borrower, the long term water provision contracts with the San Francisco consortium, and the availability and longevity of ground water resources. A thorough credit rating presentation was developed to describe the unique aspects of the City's enterprise, and presentations made to S&P. The financing received an AA rating, and allowed the City to competitively sell the financing at extremely attractive interest rates, without creating a rate burden on the city's customer base. Mr. Bengali has served as the banker to the City of Mountain View for over 20 years.



#### **\$26,055,000 City of Palo Alto, Joint Utility Revenue Bonds (Wastewater and Storm Drainage Utilities)**

As financial advisor to the City of Palo Alto, a combined wastewater and storm drainage "umbrella" enterprise was devised to meet the unique financing needs for the local wastewater collection system, and improvements to the storm drainage network in the City. Although the City had a separate storm drainage utility with a history of collections, the nuances of enforcement of the remedies for non-payment of storm drainage fees created a need to bolster the stand-alone utility, with a more established utility protocol (the wastewater system). By creating this umbrella enterprise, the City was able to garner a very strong AA rating for the program and allowed the storm drainage (and wastewater collection system) to be financed at very competitive interest rates. Mr. Bengali served as the City's financial advisor for an 8-year period.



#### **\$9,960,000 City of Santa Rosa, Asset Transfer Lease COPs (Street Improvements Program)**

The City of Santa Rosa had benefitted from the uptick in a number of revenue enhancing measures (sales tax, TOT increase, tax increment and parcel taxes) and these created revenue sources to provide for an orderly, "programmatic" capital program to resurface city streets and upgrade the traffic lighting systems. Working with the City's legal team Mr. Bengali structured a program that relied on a "pool" of existing assets to formulate an asset transfer lease, which allowed the City to pledge an annual appropriation of general fund revenues, without the extra burden of "coverage" ratios of some of the revenue streams; thereby enhancing the ability to leverage the revenues into a funding capacity, much greater than the capability of each of the revenue components. Providing for very flexible substitution provisions, and asset release provisions were additional enhancements that met the priorities of the City. The financing achieved very high ratings and wide investor acceptance resulting in a successful capital improvement program. Furthermore, as property values rose, the City was able to "release" some of its pledged assets, by providing updated appraisals; providing the City with additional financing capacity. Mr. Bengali has served as the City's banker for the past 20 years.

#### 4. PROPOSED TEAM

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Our financing team will be led by **Mr. Sohail Bengali**, a Managing Director in the San Francisco office. Mr. Bengali has over 27 years of municipal financing experience with California local governments. Mr. Bengali has completed over \$10 billion of municipal financings for issuers throughout California, and covering the entire spectrum of capital market approaches, such as leases, tax increment bonds, water/wastewater bonds, general obligation structures, sales tax and parcel tax financings, land-secured assessment and mello-roos financings, electric utility and gas utility programs, transportation and toll revenue programs, and pension programs. Mr. Bengali has financed projects in California, Arizona, Nevada, and Texas for local governments and nationally for numerous statewide agencies. His experience includes both fixed and variable rate projects, as well as short-term structures and interim bridge financing programs. Mr. Bengali was a member of the board of directors of Stone & Youngberg, and chair of its Risk Management Committee. Mr. Bengali is head of the national transportation effort at Stifel. Prior to his municipal finance career, Mr. Bengali worked in engineering consulting, as well as a tenure with the World Bank. Mr. Bengali received his bachelor's degree in economics and engineering from Swarthmore College, a master's degree in civil engineering from MIT and his master's in business administration from the University of Pennsylvania (Wharton School). Mr. Bengali is a frequent lecturer on municipal finance for industry groups and national municipal credit organizations.

Mr. Bengali will have primary responsibility for services to the City of Belmont and will be available for the discussions and meetings with staff, finance team members, council/board committees and council/board presentations. As needed, Mr. Bengali will orchestrate work by analysts and associates at Stifel to provide the analytical and data support for the various financing projects contemplated by the City. Mr. Bengali will be present for all strategic and tactical meetings to discuss, devise, articulate and execute the City's financing plan.

The City reserves the right to terminate its advisory arrangement, should Mr. Bengali not continue to provide the presence, leadership, direct involvement, and execution of any stage of the financing projects.

#### 5. PROPOSED FEE STRUCTURE

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Our proposed fee structure to serve as the City's financial advisor consists of two components.

- a. The first is an hourly fee arrangement to apply to general financial advisory discussions and work not related to any capital markets transaction. This fee will be charged at the rate of \$300/hour for managing director, \$175/hour for analyst/associate, and billed quarterly. The maximum fee for any year under this first component will not exceed \$5,000. Any amount due in excess of that amount will be included in the next succeeding capital markets financing.
- b. For a capital markets financing the fee will range between \$25,000 to \$35,000 per financing depending on the complexity and nature of the financing. For example a non-rated issue, or a private placement financing will be at the lower end of the range, whereas a transaction entailing the development of new bond financing covenants, inclusion of credit presentations and rating agency preparation will at the higher end of the range. This fee is contingent on the completion of the financing and will be paid from the proceeds of the financing. Any amount due under category (a) above will be added to the per transaction fee. Any out-of-state travel expenses will be in addition to this fee, and will be billed at cost, and also paid from the proceeds of the transaction.

We will provide advance notice of our billing, and will clarify which component (a or b) the relevant invoice relates to.

Disclosure:

Pursuant to revised Municipal Securities Rulemaking Board (“MSRB”) Rule G-23, a broker, dealer, or municipal securities dealer (“dealer”) is prohibited from acting as a Financial Advisor, as defined in Section 15B of the Exchange Act of 1934 (as amended), to an issuer for a particular issue sold on a negotiated or competitive bid basis and subsequently switching roles to act as underwriter or placement agent with respect to the same issue. In compliance with the rules set forth by the MSRB, Stifel will act as a Financial Advisor in connection with all services proposed and/or to be provided to the City herein. As such, Stifel will provide financial advisory or consultant services including advice and other assistance regarding the structure, timing, terms and other similar matters concerning any issuance. Stifel is declaring that it will do so within the regulatory framework of MSRB Rule G-23 as a financial advisor, as defined therein, and not an underwriter to the issuer for the proposed issuance of municipal securities. A “financial advisory relationship” shall be deemed to exist when a firm enters into an agreement to render financial advisory or consultant services to or on behalf of an issuer with respect to the issuance of municipal securities, including advice with respect to the structure, timing, terms and other similar matters. Accordingly, any services to be provided by Stifel as they relate to our role as financial advisor should not be construed as those of an underwriter or placement agent.



# STAFF REPORT

Meeting Date: May 13, 2014

Agenda Item #8I

**Agency:** City of Belmont

**Staff Contact:** Bozhena Palatnik, Public Works, 595-7463, bpalatnik@belmont.gov

**Agenda Title:** Resolution Approving Plans and Specifications, Authorizing Advertisement for Sealed Bids, and Authorizing the City Manager to Execute a Contract to the Lowest Responsible Bidder for an Amount not to Exceed \$640,000, and Approving a Ten Percent Construction Contingency for the Ralston Avenue Sanitary Sewer Main Replacement Project (between Notre Dame Avenue and South Road), City Contract Number 2014-526, and Amendment to the FY 2014 Budget for a Supplemental Appropriation

**Agenda Action:** Resolution

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## **Recommendation**

Staff recommends the City Council adopt the attached resolution which approves plans and specifications, authorizes advertisement for sealed bids, and authorizes the City Manager to execute a contract with the lowest responsible bidder in an amount not to exceed \$640,000, with a ten percent construction contingency for the Ralston Avenue Sanitary Sewer Main Replacement Project (between Notre Dame Avenue and South Road), City Contract Number 2014-526.

## **Background**

The existing 15-inch and 18-inch trunk sewer along Ralston Avenue has insufficient capacity to accommodate the existing peak wet weather flows. The proposed improvements would improve capacity of the trunk sewer and enhance the operational reliability of the City's existing sewer line by replacing aging and under capacity infrastructure. This contract is the first phase of the Ralston Avenue Sewer Main Improvement Project. The second phase will replace the trunk sewer between Alameda de las Pulgas and Notre Dame Avenue as funding becomes available.

## **Analysis**

Staff reviewed various construction and replacement options to increase the size of the trunk line to provide the necessary sewer capacity. Due to the pipe alignment, the least disruptive and most cost-effective is trenchless construction using the pipebursting method or horizontal directional drilling. Some sections of the pipe will be replaced using the open trench method due to utilities in close proximity to the pipe. The average depth of the sewer pipe is 10 feet, which requires trench bracing and shoring. The majority of the project will take place on the north side of Ralston Avenue. There will be a lane closure during working hours with two-way traffic maintained. The expectation is to complete most of the work during summer 2014 while schools are not in session and traffic is lighter than peak volumes.

## **Environmental Impact**

This project is categorically exempt from the California Environmental Quality Act (CEQA) under the CEQA Guidelines Section 15301(c) for the maintenance, repair or minor alteration of existing facilities.

**Alternatives**

1. Take no action
2. Refer back to staff for more information

**Attachments**

A. Resolution

**Fiscal Impact**

- ☐ No Impact/Not Applicable
- ☒ Funding Source Confirmed: \$540,000 in FY 2014 budget, Sewer Enterprise Fund, Account # 503-3-730-7003-9030 will be transferred to Account 503-3-730-7084-9030. There are sufficient funds in the Sewer Enterprise Fund for the remaining \$164,000.

**Source:**

- ☐ Council
- ☒ Staff
- ☐ Citizen Initiated
- ☐ Other\*

**Purpose:**

- ☒ Statutory/Contractual Requirement
- ☐ Council Vision/Priority
- ☐ Discretionary Action
- ☐ Plan Implementation\*

**Public Outreach:**

- ☒ Posting of Agenda
- ☐ Other\*

## RESOLUTION NO. 2014-

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BELMONT APPROVING PLANS AND SPECIFICATIONS, AUTHORIZING ADVERTISEMENT FOR SEALED BIDS, AND AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT TO THE LOWEST RESPONSIBLE BIDDER FOR AN AMOUNT NOT TO EXCEED \$640,000, AND APPROVING A TEN PERCENT CONSTRUCTION CONTINGENCY FOR THE RALSTON AVENUE SANITARY SEWER MAIN REPLACEMENT PROJECT (BETWEEN NOTRE DAME AVENUE AND SOUTH ROAD), CITY CONTRACT NUMBER 2014-526, AND AMENDMENT TO THE FY 2014 BUDGET FOR A SUPPLEMENTAL APPROPRIATION**

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WHEREAS, the existing 15-inch and 18-inch trunk sewer along Ralston Avenue has insufficient capacity to accommodate the existing peak wet weather flows; and,

WHEREAS, due to the pipe alignment, the least disruptive and most cost-effective way is trenchless construction using the pipebursting method or horizontal directional drilling; and,

WHEREAS, additional funds are required to perform these improvements; and,

WHEREAS, the City Council finds that it is necessary to augment the FY 2014 Budget for this expenditure; and,

WHEREAS, there is undesignated fund balance available to cover the augmentation and transferred into Account Number 503-3-730-7084-9003.

NOW, THEREFORE, the City Council of the City of Belmont resolves as follows:

SECTION 1. Approves plans and specifications for City Contract Number 2014-526.

SECTION 2. Authorizes the City Manager to advertise for sealed bids within the project budget of \$704,000.

SECTION 3. Authorizes the City Manager to execute a contract with the lowest responsible bidder for an amount not to exceed \$640,000, and approves a ten percent construction contingency.

SECTION 4. Amends the Fiscal Year 2014 Budget as shown in the table below.

Summary Combined Effect on Funds			
Fund	Revenues Increase (Decrease)	Expenditures Increase (Decrease)	Net Change on Fund Balance Increase (Decrease)
503	\$0	\$164,000	(\$164,000)

\* \* \*



ADOPTED May 13, 2014, by the City of Belmont City Council by the following vote:

Ayes:

Noes:

Absent:

Abstain:

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney



# STAFF REPORT

Meeting Date: May 13, 2014

Agenda Item #

**Agency:** City of Belmont

**Staff Contact:** Carlos de Melo, Community Development Director, (650) 595-7440  
[cdemelo@belmont.gov](mailto:cdemelo@belmont.gov)

**Agenda Title:** Update Regarding Downtown Revitalization, Belmont Village, and 2035 General Plan Update Project

**Agenda Action:** Motion

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## **Recommendation**

Staff recommends the City Council appoint a Council subcommittee to assist staff in evaluating and recommending the Project consultant.

## **Background/Analysis**

At the February 11, 2014 City Council meeting, the Council moved an Action Plan forward including authorizing staff to obtain necessary professional consultant proposals to:

- 1) Assist in finalizing the existing draft Belmont Village documents;
- 2) Update the City's General Plan Elements (Land Use, Circulation/Mobility, and others as appropriate);
- 3) Prepare the associated Program Environmental Impact Report (EIR); and,
- 4) Create an implementation plan to ensure that the City's above-described regulatory documents facilitate transformation of Downtown Belmont to a thriving, walkable commercial and residential activity node.

The Council also authorized a General Fund advance (not to exceed \$550,000) as part of their Mid-Year review to provide staff with the necessary resources to complete the above-described Action Plan. This General Fund loan will be repaid via anticipated development, housing, and CEQA impact fees to be established in conjunction with this project. Staff has recently solicited Scopes of Work and has also conducted initial interviews with consultant firms for the project. Staff is requesting the Council appoint a Council subcommittee to evaluate the proposals and develop a final recommendation on the consultant selection.

In a separate effort in January 2014, the City filed a grant application to the San Mateo City/County Association of Governments (C/CAG) Priority Development Area ("PDA") Planning Program. The key goals of the C/CAG PDA Planning Program are:

- Support intensified land uses and increase the supply of housing, including affordable housing, and jobs in areas around transit stations, downtowns, and transit corridors;
- Assist in streamlining the entitlement process and help PDA's become more development ready;
- Address challenges to achieving infill development and higher densities.

Successful funding of Belmont’s grant application will assist with Downtown Revitalization efforts for the Belmont Village PDA that will specifically address area-wide parking, streetscape, development, and financing implementation strategies. The grant application is currently under review by C/CAG for submission to the Metropolitan Transportation Commission (MTC) for funding.

**Alternatives**

1. Provide Alternative Direction to Staff.
2. Take No Action.

**Fiscal Impact**

- ☒ No Impact/Not Applicable  
☐ Funding Source Confirmed:

**Source:**

- ☐ Council  
☒ Staff  
☐ Citizen Initiated  
☐ Other

**Purpose:**

- ☐ Statutory/Contractual Requirement  
☒ Council Vision/Priority  
☐ Discretionary Action  
☒ Plan Implementation

**Public Outreach:**

- ☒ Posting of Agenda  
☐ Other



# STAFF REPORT

Meeting Date: May 13, 2014

Agenda Item #10A

**Agency:** City of Belmont

**Staff Contact:** Scott Rennie, City Attorney, 595-7409, [srennie@belmont.gov](mailto:srennie@belmont.gov)  
Afshin Oskoui, Public Works Director, 595-7459, [aoskoui@belmont.gov](mailto:aoskoui@belmont.gov)

**Agenda Title:** Consideration of Amendments to the Sidewalk Construction and Maintenance Ordinance

**Agenda Action:** Introduce Ordinance

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## **Recommendation**

Staff recommends that the City Council introduce the proposed ordinance amending the sidewalk construction and maintenance regulations in Belmont City Code Chapter 22.

## **Background**

Under State law, property owners are responsible for maintaining the sidewalk area, including the trees, fronting their property from the lip of the gutter to the back of the right-of-way easement. This obligation originates in the Improvement Act of 1911 and is codified in Streets and Highways Code Section 5610, which provides as follows:

The owners of lots or portions of lots fronting on any portion of a public street or place when that street or place is improved or if and when the area between the property line of the adjacent property and the street line is maintained as a park or parking strip, shall maintain any sidewalk in such condition that the sidewalk will not endanger persons or property and maintain it in a condition which will not interfere with the public convenience in the use of those works or areas save and except as to those conditions created or maintained in, upon, along, or in connection with such sidewalk by any person other than the owner, under and by virtue of any permit or right granted to him by law or by the city authorities in charge thereof, and such persons shall be under a like duty in relation thereto.

“Sidewalk” is defined by Streets and Highways Code Section 5600 to include “a park or parking strip maintained in the area between the property line and the street line . . . .” The obligation under Section 5610 is a financial obligation owed only to the City, meaning that if the property owner fails to maintain the sidewalk area, the City can perform the work and proceed to collect the cost from the property owner. Because the obligation is owed only to the City, a property owner would not be liable under the statute for injuries caused by the property owner’s failure to maintain the sidewalk area. Cities can however, adopt ordinances that extend the property owner’s obligation to the public and make the property owner liable to the public for injuries caused by the property owner’s failure to maintain the sidewalk area. A city’s ability to adopt such an ordinance was confirmed by the California Court of Appeal in *Gonzales v. City of San Jose* (2004)125 Cal.App.4th 1127.

The City of Belmont adopted such an ordinance in 2004, which is codified in the Belmont City Code (BCC) Chapter 22, Division 5. The ordinance made property owners liable for injuries caused by the owner's failure to maintain the sidewalk fronting their property and held the city harmless for such injuries by declaring that no liability for the injuries would attach to the City (BCC §22-62). The ordinance also included provisions duplicating a procedure found in state law (Streets and Highways Code Sections 5611-5628.1) for enforcing the obligation to repair the sidewalk (BCC §22-72, §§22-74 - 22-80.2). At the time the ordinance was adopted, the now former Belmont Redevelopment Agency had assumed responsibility for installation and maintenance of special sidewalk improvements in certain areas of the downtown. The ordinance acknowledge this situation by including an exception for sidewalks maintained by the Redevelopment Agency (BCC §22-73). In addition, the ordinance re-adopted provisions establishing a duty to construct sidewalks fronting existing development that had previously been repealed in 1998.

Over the past several years, the Public Works Department, acting on behalf of the Belmont Redevelopment Agency, have made repairs to the paver sidewalks located in the Downtown to maintain them in a safe condition for pedestrian traffic. This work has mainly consisted of resetting pavers that had been displaced, installing pavers where a tree had been removed and replacing two curb ramps with sidewalk in the middle of the 900 block of Ralston Avenue.

### **Analysis**

The proposed amendments update, clarify, and streamline the existing regulations for sidewalk maintenance while maintaining the basic policy direction of the 2004 sidewalk maintenance ordinance. The amendments update the regulations to reflect the dissolution of the Redevelopment Agency by deleting the exception in BCC§22-73 for sidewalks maintained by the former Agency. The amendments clarify the regulations by creating a new Division 6 that separates the provisions pertaining to sidewalk maintenance from the provisions pertaining to sidewalk construction and re-organizing certain provisions. The amendments streamline the regulations by eliminating provisions that duplicate procedure for enforcement available to the City under state law. The amendments also refine the language intended to hold the City harmless by replacing the language purporting to relieve the City of liability for the property owner's failure to maintain the sidewalk with language giving the City an express right of indemnity from the owner (see new BCC Section 22-81). These refinements conform the regulations to contemporary case law that limits the City's ability to absolve itself of liability.

With respect to the former Redevelopment Agency's practice of maintaining pavers in the Downtown sidewalks, staff proposes a one-time effort to bring these sidewalks up to an acceptable level of service, the cost of which will be submitted to the Successor Agency to the Former Belmont Redevelopment Agency for payment. This action will conclude the former Redevelopment Agency's obligation in the Downtown for sidewalk maintenance and result in a uniformed condition of responsibility for sidewalks throughout the City.

### **Alternatives**

1. Take No Action.

### **Attachments**

- A. Proposed ordinance

**Fiscal Impact**

- ☐ No Impact/Not Applicable
- ☒ Funding Source Confirmed: Staff has estimated the cost for performing a one-time effort to bring the Downtown sidewalks up to an acceptable level of service to be \$25,000.

Should this action be approved, the cost will be submitted to the Successor Agency to the Former Belmont Redevelopment Agency for inclusion on their Recognized Obligation Payment Schedule or ROPS. ROPS are subject to approval by the Oversight Board and the State of California Department of Finance.

**Source:**

- ☐ Council
- ☒ Staff
- ☐ Citizen Initiated
- ☐ Other\*

**Purpose:**

- ☐ Statutory/Contractual Requirement
- ☐ Council Vision/Priority
- ☒ Discretionary Action
- ☐ Plan Implementation\*

**Public Outreach:**

- ☒ Posting of Agenda
- ☐ Other\*

\*

## ORDINANCE NO. \_\_\_\_\_

### AN ORDINANCE OF THE CITY OF BELMONT AMENDING BELMONT CITY CODE CHAPTER 22 REGARDING THE CONSTRUCTION, MAINTENANCE AND REPAIR OF SIDEWALKS

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THE CITY COUNCIL OF THE CITY OF BELMONT DOES ORDAIN AS FOLLOWS:

#### SECTION 1. BCC SECTION 22-61 AMENDED

Belmont City Code Chapter 22, Article V, Section 22-61 is amended as follows:

##### **Sec. 22-61. Scope of this article; definitions.**

(a) This article shall not apply to construction of curbs, gutters and sidewalks for new building construction.

(b) *Block* means property facing one (+) side of any street between the next intersecting streets or between the terminus of a dedicated right-of-way of a street and an intersecting street. Street does not include an alley or other right-of-way unless it is of the same width as a regular residential minimum width street. In the case of an alley, block means property facing both sides of any alley between the next intersecting streets or alleys, or between the terminus of an alley and an intersecting street.

(c) *Cost and construction cost or variants thereof*, means and includes both the actual cost of construction of the work, design and inspection and incidental expenses, as defined in this article.

(d) *Sidewalk* shall include all portions of a parking strip maintained in the area between the property line and the street line and also includes curbs, gutters, bulkheads, retaining walls or other works for the protection of any sidewalks or of any such parking strip.

~~(e) A tripping hazard on a sidewalk shall be any vertical displacement greater than or equal to one half (1/2) inch.~~

#### SECTION 2. BCC SECTION 22-62 AMENDED

Belmont City Code Chapter 22, Article V, Section 22-62 is amended as follows:

##### **Sec. 22-62. Duty to construct, ~~maintain or repair~~.**

(a) Adjacent property owners are responsible for the construction, ~~maintenance and repair~~ of the sidewalk adjacent to or fronting on any portion of their property. Owners required by this article to construct, ~~repair or maintain~~ any portion of a sidewalk shall owe a duty to members of the general public, including travelers on the sidewalk, to construct, ~~repair or maintain~~ the sidewalk in a safe and secure condition. It shall be a violation of this article for owners to fail to perform the duties and obligations established by this article or to perform such duties and obligations in a negligent manner. If any person suffers personal injury or damage to property, as a result of the failure of owners to construct ~~or maintain~~ any sidewalk in a safe and secure condition as required by this article, the adjacent property owners shall be directly liable to such person for the resulting injury or damages, ~~and no liability shall~~

attach to the city for such injury or damages. The City of Belmont shall have a cause of action for indemnity against a property owner for any damages it may be required to pay as satisfaction of any judgment or settlement of any claim that results from injury to persons or property as a legal result of the owner's failure to construct a sidewalk in accordance with this section.

(b) Construction ~~or repair of~~ curbs, gutters and sidewalks shall occur when:

(1) The director of public works or his/her designee finds that curbs, gutters and sidewalks have been constructed, or that their construction has been guaranteed to his satisfaction, in front of properties constituting more than fifty (50) percent of the frontage in any block; or

(2) Where a petition signed by the owners of more than sixty (60) percent of the front footage of the block has been filed with the city clerk requesting the installation of such improvements; or

(3) Whenever the city council of the city upon its own motion has ordered the installation of such improvements.

~~(4) The director of public works or his/her designee determines that any portion of the sidewalk contains a tripping hazard, is out of repair, pending reconstruction, in a condition to endanger persons or property, or in a condition to interfere with public convenience in the use of the sidewalks.~~

### SECTION 3. BCC SECTION 22-72 REPEALED

Belmont City Code Chapter 22, Article V, Section 22-72 is repealed.

#### ~~Sec. 22-72 ————— Duty to repair or remove sidewalks.~~

~~(a) When any portion of the sidewalk contains a tripping hazard, is out of repair, pending reconstruction, in a condition to endanger persons or property or in a condition to interfere with the public convenience in the use of such sidewalk, the director of public works or his/her designee shall notify the owner or person in possession of the property adjacent to or fronting on that portion of sidewalk so out of repair, to repair or remove the curbs, gutters and sidewalk.~~

~~(b) If the director of public works or his/her designee determines there is no public benefit to the repair of the sidewalk, the adjacent property owner or person in possession of the property adjacent to or fronting on the sidewalk will be notified to remove the sidewalk and grade to match the adjacent street or property.~~

~~(c) Notice to repair or remove may be given by delivering a written notice personally to the owners or to the persons in possession of the property adjacent to or fronting upon the curbs, gutters and sidewalks to be repaired or removed or by mailing a postal card, postage prepaid, to the persons in possession of such property, or to the owners thereof at their last known address as the same appears on the last equalized assessment rolls of such city or to the name and address of the persons owning such property as shown in the records of the office of the city clerk.~~

~~(d) The postal card shall contain a notice to repair or remove the curbs, gutters and~~



~~sidewalks as the case may be, and the director of public works or his/her designee shall, immediately upon the mailing of the notice, cause a copy thereof, to be posted in a conspicuous place on the property.~~

~~(e) The notice shall particularly specify what work is required to be done, and how it is to be done, and what materials shall be used in the repair or removal and shall further specify that if the repair or removal is not commenced within thirty (30) days after notice is given and diligently and without interruption prosecuted to completion within thirty (30) days of commencement, the director of public works or his/her designee shall cause the repair or removal to be done.~~

~~(f) Encroachment permit fees shall be waived if property owners repair or remove the curbs, gutters and sidewalk in response to the notice required by this Section.~~

#### SECTION 4. BCC SECTION 22-73 REPEALED

Belmont City Code Chapter 22, Article V, Section 22-73 is repealed.

#### ~~Sec. 22-73. Exceptions.~~

~~The redevelopment agency shall be responsible for the maintenance and repair of any special pavement treatments installed as part of any city sponsored project within the area covered by the downtown design guidelines enumerated in the downtown specific plan.~~

#### SECTION 5. BCC SECTION 22-74 AMENDED

Belmont City Code Chapter 22, Article V, Section 22-74 is amended to read:

#### **Sec. 22-74. Report following completion of construction repair or removal; contents.**

Upon the completion of the construction ~~repair or removal~~, the director of public works or his/her designee shall prepare and file with the city council a report specifying the work which has been done, the cost of work, a description of the real property in front of which the work has been done and the assessment against each lot or parcel of land proposed to be levied to pay the cost or portion thereof. The report may include work done in front of any number of parcels of property, whether contiguous to each other or not. In determining the amount of the assessment against each lot or parcel of land, the director of public works or his/her designee shall assess the same portion of the total cost of the work against each lot or parcel as that parcel will receive of the total benefit from the work.

#### SECTION 6. BCC SECTION 22-75 AMENDED

Belmont City Code Chapter 22, Article V, Section 22-75 is amended to read:

#### **Sec. 22-75. Notice of cost; service; contents; time for hearing.**

(a) Upon the completion of the construction ~~repair or removal~~, the city shall cause notice of the cost of the construction, repair or removal be given in the manner specified in this article for the giving of notice to construct, repair or remove, which notice shall specify the day, hour and place when the city council will hear and pass upon a report by the director of

public works or his/her designee of the cost of the work, together with any objections or protests, if any, which may be raised by property owners liable to be assessed for the cost of such work and any other interested persons. In no case shall the hearing provided for in this section be sooner than ten (10) days after giving of notice.

(b) The cost of the work may include a proportionate share, as determined by the city council, of the cost of improvements constructed in a place other than in front of a parcel of property which is required for the proper functioning of the improvements in front of the parcel.

#### SECTION 7. BCC SECTION 22-76 AMENDED

Belmont City Code Chapter 22, Article V, Section 22-76 is amended to read:

##### **Sec. 22-76. Hearing on report; confirmation; finality of decision.**

Upon the day and hour fixed for the hearing the city council shall hear and pass upon the report of the director of public works or his/her designee, together with any objections or protests which may be raised by any of the property owners liable to be assessed for such construction, ~~repair or removal~~ and any other interested persons. Thereupon the city council may make such revision, correction or modifications in the report as it may deem just, after which, by motion or resolution, the report as submitted, or as revised, corrected or modified, shall be confirmed. The city council may adjourn the hearings from time to time. The decisions of the city council on all protests and objections which may be made, shall be final and conclusive.

#### SECTION 8. BCC SECTION 22-77 AMENDED

Belmont City Code Chapter 22, Article V, Section 22-77 is amended by modifying the section title to read as follows. The text of Section 22-77 is unchanged.

##### **Sec. 22-77. Assessment of cost; lien for construction, ~~repair or removal.~~**

#### SECTION 9. BCC CHAPTER 22, ARTICLE VI ADDED

Belmont City Code Chapter 22 is amended by adding Article VI to read

#### ARTICLE VI. MAINTENANCE OF SIDEWALKS

##### **Sec. 22-81. Maintenance of sidewalks.**

(a) As used in this section, sidewalk area includes the sidewalk, any park or parking strip maintained in the area between the property line and the street line, and the curbing, gutter, driveway, bulkheads, retaining walls or other works for the protection of any sidewalk or of any park or parking strip.

(b) The owner of a lot fronting on or adjacent to a public street must maintain any sidewalk area in good repair and condition. This duty includes but is not limited to maintenance and repair of surfaces including performance of grinding, removal and replacement of sidewalks, and repair and maintenance of curb and gutters, so that the sidewalk area will remain in a condition that is not dangerous to property or to persons using

the sidewalk area in a reasonable manner and will be in a condition which will not interfere with the public convenience in the use of the sidewalk area.

(c) An owner required by this section to maintain a sidewalk area shall owe a duty to members of the public to keep and maintain the sidewalk area in a safe and non-dangerous condition.

(d) If, as a result an owner's failure to maintain a sidewalk area in a safe and non-dangerous condition, any person suffers injury or damage to person or property, the owner shall be liable to the person for the resulting damages or injury.

(e) The City of Belmont shall have a cause of action for indemnity against a property owner for any damages it may be required to pay as satisfaction of any judgment or settlement of any claim that results from injury to persons or property as a legal result of the owner's failure to maintain a sidewalk area in accordance with this section.

(f) Failure of an owner to maintain a sidewalk area as set forth in this section shall constitute a public nuisance.

**Sec. 22-82. Repairs.**

When any portion of the sidewalk is out of repair or pending reconstruction and in a condition to endanger persons or property or in a condition to interfere with the public convenience in the use of such sidewalk, the public works director may, in addition or as an alternative to any other legal remedy, utilize the procedures in Streets and Highways Code Division 7, Part 3, Chapter 22, Article 2 to cause the necessary work to be performed by the adjoining property owner.

**Sec. 22-83. No mandatory duty of city created.**

Nothing in this chapter is intended to create a mandatory duty on the part of the city manager or the city to protect persons or property from a violation of the provisions of this chapter.

**SECTION 10. CEQA EXEMPTION.**

The City Council finds, under Title 14 of the California Code of Regulations, Section 15061(b)(3), that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project which has the potential for causing a significant effect on the environment. The Council therefore directs that a Notice of Exemption be filed with the San Mateo County Clerk in accordance with the CEQA guidelines.

**SECTION 11. SEVERABILITY.**

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid, such a decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Belmont hereby declares that it would have passed this Ordinance and each section or subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

## SECTION 12. EFFECTIVE DATE.

This Ordinance shall take effect and will be enforced thirty (30) days after its adoption.

## SECTION 13. PUBLICATION AND POSTING

The City Clerk has caused to be published a summary of this ordinance, prepared by the City Attorney under Government Code Section 36933, subdivision (c) of the, once, in a newspaper of general circulation printed and published in San Mateo County and circulated in the City of Belmont, at least five days before the date of adoption. A certified copy of the full text of the ordinance was posted in the office of the City Clerk since at least five days before this date of adoption. Within 15 days after adoption of this ordinance, the City Clerk shall cause the summary of this ordinance to be published again with the names of those City Council members voting for and against the ordinance; and the City Clerk shall post in the office of the City Clerk a certified copy of the full text of this adopted ordinance with the names of those City Council members voting for and against the ordinance.

\* \* \*

The City Council of the City of Belmont, California introduced the foregoing ordinance, on May 13, 2014 and adopted the ordinance at a regular meeting held on [insert date], 2014 by the following vote:

Ayes:

Noes:

Absent:

Abstain:

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

## COUNCIL COMMITTEE AND INTERGOVERNMENTAL ASSIGNMENTS-2014

Council Committees/Ad Hoc/Liaisons	Delegate/Representative	Alternate	Contact	Meeting Schedule	Packet	Comp.
<b>School 2+2+2 Committee</b> Discuss issues that affect the Elementary School Dist., RWC, and the City	<ul style="list-style-type: none"> <li>Braunstein</li> <li>Stone</li> </ul>	NA	City Manager	As Needed		N/A
<b>Liaison Senior Citizen Advisory Committee</b>	Reed	Stone	Rich Bortoli 595-7444	Odd Months 4 <sup>th</sup> Tuesday, 3:00 P.M.		N/A
<b>Notre Dame de Namur University Advisory Board</b>	Wright	Braunstein	City Manager	As needed		N/A
<b>Audit Subcommittee</b>	<ul style="list-style-type: none"> <li>Vice Mayor</li> <li>Reed</li> <li>City Treasurer Violet</li> </ul>	NA	Finance Director	Quarterly		N/A
<b>Four Corners Ad Hoc Committee</b> Addressing traffic/circulation at Alameda/San Carlos Ave. near Carlmont High	<ul style="list-style-type: none"> <li>Braunstein</li> <li>Stone</li> </ul>	N/A	City Manager	As needed		N/A
<b>New Website Design Ad Hoc Committee</b> Input on new City website	<ul style="list-style-type: none"> <li>VACANT</li> <li>Lieberman</li> </ul>	N/A	Bill Mitchell	As needed		N/A
<b>Liaison to Belmont Chamber of Commerce</b>	Reed	Stone	Mary Morrissey-Parden	3 <sup>rd</sup> Thurs, noon, Motel 6		

### Joint Powers Authorities/Intergovernmental Agencies

<b>City/County Association of Governments Boards (C/CAG) Congestion Management Agency</b>	Braunstein	Stone	Sandy Wong 599-1420	Monthly 2nd Thursday, 7:00 P.M.	Yes	N/A
<b>Silicon Valley Clean Water Agency (formerly known as SBSA)</b> JPA for Waste Treatment	Lieberman	Reed	Dan Child 591-7121	Monthly 3rd Thursday, 8:00 A.M.	Yes	\$100 a meeting
<b>Belmont-SC Fire Dept JPA</b>	<ul style="list-style-type: none"> <li>Lieberman</li> <li>Wright</li> </ul>	Stone	City Manager 595-7410	As Needed	Yes	N/A
<b>San Mateo County Pre-Hospital Emergency Services JPA</b>	Lieberman	Stone	City Manager 595-7410	Quarterly		N/A
<b>Peninsula Traffic Congestion Relief Alliance</b> Traffic issues	VACANT	(None)	Alejandra de Trinidad 588-8170	Bi-Monthly (even months) 3 <sup>rd</sup> Thursday, 8:00 A.M.		N/A

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\* Note: all one year terms (Dec-Dec), except Mosquito Abatement, as noted.

<b>ABAG General Assembly Representative</b> Regional planning agency for land use, housing, environmental quality, and economic development	Mayor	Vice Mayor	Ezra Rapport, Dir. 510-464-7900	April, November General Assembly Meetings		N/A
<b>Peninsula Division, League of CA Cities</b> State and local legislative issues (All Councilmembers invited)	Mayor	Vice Mayor	League of California Cities	Quarterly dinner meetings		N/A
<b>San Mateo County Mosquito and Vector Control District</b> Independent Special District, keeps database on mosquito sources	Citizen Representative: Wade Leschyn  Term expires 12/14	N/A	Robert Gay 344-8592	Monthly 2nd Tuesday, 7:30 P.M.		\$100 a meeting
<b>San Mateo County Library JPA</b> Policy direction, oversee budget, services & library programs	Stone	VACANT	Ann-Marie Despaine, Library Director	Quarterly plus one 2 <sup>nd</sup> Monday, 8:00 A.M.	Yes	N/A
<b>SFO Roundtable</b> Issues include Noise, Runway Configurations	<i>(None)</i>	<i>(None)</i>	Dave Carbone, Coordinator 821- 3571	1st Wednesday of Month 6 x yr 7:00 P.M.	Yes	N/A
<b>San Mateo Emergency Service Council</b> Disaster Preparedness	Braunstein	Stone	Lt. Mark Robins, 599-1295 Or Kathy Pape, 363-4790	Quarterly 3rd Thursday, 5:30 P.M., Courthouse	Yes	N/A
<b>San Mateo County Council of Cities/City Selection Committee</b> Guest Speakers, current issues (All Councilmembers invited)	Mayor	Vice Mayor	Rebecca Romero 363-1802	Monthly-Dinner meeting 4th Friday, 6:00 P.M.		N/A
<b>Regional Housing Needs Policy Committee</b>	Reed	Stone	Carlos de Melo, 595-7440 Nancy Blair, C/CAG	As Needed		N/A
<b>Housing and Regional Trust (HEART) Member Agency Committee</b>	Reed	Stone	Mark Moulton, HEART Exec Director, 872-4444	2-3 annually, 3 <sup>rd</sup> Wed, 3:00 p.m.		N/A
<b>Grand Boulevard</b>	Representative: Rotating		City Manager 595-7408	2-3 times annually		N/A
<b>High Speed Rail Consortium</b>	Stone	Reed		Quarterly, Fridays 8:15 a.m.		N/A

<b>Cal Mod (Caltrain Modernization)</b>	Stone	Reed		Last Thurs of Month 6-8 pm		N/A
<b>Oversight Board for former Redevelopment Agency (Fire Board Appointment)</b>	Lieberman	NA	Jennifer Walker, Mgt. Analyst (650) 595-7453	Monthly, 1:30 p.m., 2 <sup>nd</sup> Thursdays		N/A
<b>SBWMA (South Bay Waste Management Authority – “Rethink Waste”)</b>	Stone	VACANT	Cindi Urman, Rethink Waste (650)802-3510	Monthly, 2:00 p.m., 4 <sup>th</sup> Thurs, San Carlos		

**THESE APPOINTMENTS ARE MADE BY THE CITIES SELECTION COMMITTEE:**

<b>Association of Bay Area Governments</b> Regional planning agency for land use, housing, environmental quality, and economic development	<b>Local Agency Formation Commission (LAFCO)</b> Authority over all reorganizations & boundary changes within County	<b>Bay Area Air Quality Management District</b> Works to reduce air contaminants within the District
<b>Metropolitan Transportation Commission (MTC)</b> Reviews applications for state & federal transportation funds, maintains regional transportation plan for Bay Area	<b>California Identification System (Cal-ID)</b> Determine the placement of Random Access Network equipment within the County	<b>Peninsula Corridor Joint Powers Board (Caltrain)</b> Set policy for operation of Peninsula Commute Service
<b>Community Development Committee</b> Reviews the needs & priorities for Community Development Block Grant funds received by the County	<b>Supplemental Law Enforcement Oversight Committee</b> Review Supplemental Law Enforcement Service Fund expenditures	<b>Domestic Violence Council</b> <b>Evaluate efforts to reduce domestic violence, raise public awareness and collect statistics</b>
<b>San Mateo County Transit District (Samtrans)</b> Set District Policies	<b>San Mateo County Transportation Authority (SAMTAC)</b> Implement Measure A	<b>HEART (Housing Endowment and Regional Trust) Board</b>

**THESE APPOINTMENTS ARE MADE THROUGH C/CAG:**

<b>2020 Peninsula Gateway Corridor</b> ▪ Technical Advisory Committee ▪ Policy Advisory Committee	<b>Airport Land Use Committee (ALUC)</b>	<b>Bicycle and Pedestrian Advisory Committee (BPAC)</b>
<b>Congestion Management Program and Environmental Quality Committee (CMEQ)</b> addresses environmental issues	<b>Congestion Management Program Technical Advisory Committee (TAC)</b>	<b>Legislative Committee</b>
<b>National Pollutant Discharge Elimination Technical Advisory Committee (NPDES)</b>	<b>Integrated Waste management (SWAC)</b>	<b>Utilities Sustainability Task Force (USTF)</b>



Meeting Date: May 13, 2014

Agenda Item # 8J

## STAFF REPORT

**Agency:** City of Belmont

**Staff Contact:** Bill Mitchell, IT Director (650) 637-2970 bmittchell@belmont.gov

**Agenda Title:** Resolution Authorizing the City Manager to Enter into a Five Year Agreement with Astound Broadband, LLC for Internet Service for an Annual Amount not to Exceed \$9,341 and Resolution Authorizing the City Manager to Enter into a One Year Contract with AT&T Business Solutions for Telecommunication Services for an Amount not to exceed \$14,879.

**Agenda Action:** Resolution

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### **Recommendation**

Adopt resolutions that: 1) Authorize the City Manager to enter into a five year agreement with Astound Communications for Internet Services for an annual amount not to exceed \$9,341; and 2) Authorize the City Manager to enter into a one year agreement with AT&T for telecommunication services for an annual amount not to exceed \$14,879.

### **Background**

In 1996 the City entered into an agreement for all telecommunication services. This agreement now includes services that can be categorized as follows:

- Internet connectivity
- Special purpose services such as building alarms (fire and burglar) and elevator service

Information Technology reviewed options to our current telecommunications agreement and determined the City would reduce cost and improve service levels by replacing the current agreement.

### **Analysis**

Analysis will be discussed by each telecommunication service category.

#### *Internet Connectivity:*

The City currently pays \$1,546/month for 10 Megabits per second (10M) of Internet connectivity.

Business class Internet service is significantly more expensive than home use due to enhanced quality of service, symmetrical speed (upload and download speeds are the same), and dedicated, not shared, bandwidth. That said, Information Technology staff believed a better deal could be made. Multiple vendors provided quotes for 100M of service.





Meeting Date: May 13, 2014

Agenda Item # 8K

## STAFF REPORT

**Agency:** City of Belmont

**Staff Contact:** Bill Mitchell, IT Director (650) 637-2970 bmittchell@belmont.gov

**Agenda Title:** Resolution Authorizing the Issuance of a Purchase Order to Xtelesis Corporation to Procure, Install and Maintain a Telephone System for an Amount not to Exceed \$120,508 and Resolution Authorizing the City Manager to Enter into a Three Year Agreement with U.S. TelePacific Corporation for Telecommunication Services for an Annual Amount not to Exceed \$36,752.

**Agenda Action:** Resolution

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### **Recommendation**

Adopt resolutions that: 1) Authorize the City Manager to execute a purchase order to Xtelesis Corporation for telephone equipment, technical services, training and five years of maintenance for an amount not to exceed \$120,508; and 2) Authorize the City Manager to enter into a three year agreement with U.S. TelePacific Corporation. for telecommunication services for an annual amount not to exceed \$36,752.

### **Background**

In 1996 the City entered into an agreement to outsource telephone services. The agreement included hardware, software, phone administration, maintenance and associated telecommunication services. Today, the cost of these services is \$8,993 per month which equates to \$107,916 annually.

Information Technology reviewed options to our current telephone agreement and determined the City was best served by purchasing a telephone system and associated telecommunication services. Additionally, Information Technology staff would provide the management and administration of the phone system. Benefits are as follows:

- Cost Savings
- Improved Operational Efficiency
- Mobile Device (Smartphone & Tablet) Integration
- One Network for Voice and Data – (Reduced Cost and Less Moving Parts)

### **Analysis**

Analysis will be broken down into two parts, Phone System and Telecommunication Services.

#### *Phone System:*

Voice over Internet Protocol (VoIP) is the standard for today's business phone system. VoIP provides reduced cost, ease of technical management, enhanced productivity and mobility.

Information Technology reviewed several VoIP offerings and selected ShoreTel's unified communications phone system based on the following:

- Met all goals as outlined previously
  - Cost Savings
    - Defined later in this document
  - Improved operational efficiency
    - Quicker response to add/move/change requests
    - Unified Communication – move from desk phone to mobile device seamlessly
    - Availability and ease of use of advanced features (forward, transfer, conferencing)
    - Mobile Device Integration
    - Use smartphones and tablets as desk phones
    - Web and audio conferencing on desk phone, smart phone and/or tablet
  - One network for voice and data
    - ShoreTel solution will utilize existing computer network infrastructure.
- Lowest total cost of ownership as defined by Aberdeen Research
- Simple to install, manage, use and grow. Based on reference checks with neighboring cities.
- ShoreTel has won a majority of CA City RFPs in the last three years including:
  - City of Foster City, CA
  - Oakland, CA
  - Mountain View, CA
  - Burlingame, CA

Xtelesis Corporation (Xtelesis) was selected as the implementation vendor due to the following factors:

- ShoreTel recommendation: In December, 2013 Xtelesis received ShoreTel's Circle of Excellence Award. The award recognizes Xtelesis for exceptional achievement in areas including customer satisfaction, proficiency with advanced applications, and revenue growth. The Circle of Excellence Award is the highest award given by ShoreTel to its partners, less than one-half of one percent of all partners earn this distinction.
- Xtelesis recently completed the successful redesign and implementation of the City's computer network infrastructure. This infrastructure is the underlying foundation for the ShoreTel solution. Dealing with one vendor for both network and phone issues is a significant advantage.

ShoreTel hardware and licensing will be procured under the Western States Cooperative Agreement (WSCA) a Governmental Purchasing Alliance (GPA). Purchasing under this GPA meets the City's purchasing policy per Resolution 9438.

### *Telecommunication Services:*

This service allows a company's phone system to receive and make calls outside of the business.

Multiple vendors submitted proposals and the solution proposed by U.S. TelePacific Corporation (TelePacific) was chosen due to cost, ability to provide circuit redundancy, ShoreTel experience, and customer references.

The combined ShoreTel and TelePacific solutions will result in \$92,984 savings over the next three years, the contract term with TelePacific. Recovery for the ShoreTel Capital Cost is less than 2 years.

	Annual Cost			
	Year 1	Year 2	Year 3	Total Savings
<b><i>Current Solution</i></b>				
Annual Telephone Charges	\$ 107,916.00	\$ 107,916.00	\$ 107,916.00	
<b><i>Proposed Solution</i></b>				
ShoreTel Onetime Capital Cost	\$ 120,508.00			
Annual Telephone Charges	\$ 36,752.00	\$ 36,752.00	\$ 36,752.00	
<b>Annual Savings</b>	\$ (49,344.00)	\$ 71,164.00	\$ 71,164.00	\$ 92,984.00

### **Alternatives**

1. Take no action
2. Deny recommendation
3. Refer back to staff for more information and/or alternative options.

### **Attachments**

- A. Resolution
- B. Quotes
- C. Contract

### **Fiscal Impact**

- ☐ No Impact/Not Applicable
- ☒ Funding Source Confirmed: 573-1-302-9040 – Xtelesis Corporation  
Department Telephone Accounts – U.S. TelePacific Corporation.

#### **Source:**

- ☐ Council
- ☒ Staff
- ☐ Citizen Initiated
- ☐ Other\*

#### **Purpose:**

- ☐ Statutory/Contractual Requirement
- ☐ Council Vision/Priority
- ☐ Discretionary Action
- ☒ Plan Implementation\*

#### **Public Outreach:**

- ☐ Posting of Agenda
- ☐ Other\*

\* Information Technology Work Plan



## Service Agreement

### Section 1 Customer Information

Account Number (existing acct) _____			
Company Legal Name (Individual if Sole Proprietorshi		City of Belmont, California	
Doing Business As (DBA) _____			
Contact Name and Title Bill Mitchell - IT Director			
Telephone Number	650-637-2970	Fax Number	Email bmittchell@belmont.gov
Service Address: 110 SEM LN -			
City	BELMONT	State	CA Zip 94002

### Section 2 TelePacific Services

TelePacific will provide Customer with the specified type and amount of Services at the rates, and terms and conditions listed below, and Customer shall accept and pay for Services under the Terms and Conditions to which Customer agreed on the Telecommunications Account Agreement that governs this Service Agreement.

Description of Services	Account Term (Yrs)	QTY	Monthly Recurring Charge (MRC)	MRC Total	Set-up Charge (NRC)	NRC Total
CA Caller ID Name	3	1	\$9.50	\$9.50	\$115.00	\$115.00
Trunk Group Call Forwarding within Switch	3	1	\$15.00	\$15.00	\$40.00	\$40.00
Voice Only PRI (P)	3	1	\$414.12	\$414.12	\$500.00	\$500.00
Install Discount	3	1	\$0.00	\$0.00	(\$577.50)	(\$577.50)
CA Basic T-Pack 1000	3	2	\$35.00	\$70.00	\$0.00	\$0.00
CA Basic T-Pack 2500	3	1	\$60.00	\$60.00	\$0.00	\$0.00
Custom Bill Formatting	0	2	\$0.00	\$0.00	\$0.00	\$0.00
OneCentral	2	1	\$0.00	\$0.00	\$0.00	\$0.00
Double Dash: T-Pack Minute Bundle 1000	3	2	(\$35.00)	(\$70.00)	\$0.00	\$0.00
10 Mbps Port	3	1	\$350.00	\$350.00	\$0.00	\$0.00
10 Mbps Access	3	1	\$540.00	\$540.00	\$500.00	\$500.00
Internet	3	1	\$100.00	\$100.00	\$0.00	\$0.00
IP Addresses (block of 16)	3	1	\$0.00	\$0.00	\$0.00	\$0.00
Network Monitor option	3	1	\$0.00	\$0.00	\$0.00	\$0.00
No Router Required	3	1	\$0.00	\$0.00	\$0.00	\$0.00
T1 Card Service Addendum	3	1	\$0.00	\$0.00	\$0.00	\$0.00
Standard Local and Long Distance Rates	3	1	\$0.00	\$0.00	\$0.00	\$0.00
Ethernet Third Party ETF Pass-Through Addendum	3	1	\$0.00	\$0.00	\$0.00	\$0.00
T1 Card Credit	3	1	\$0.00	\$0.00	\$0.00	\$0.00
GM Adjustment : Bandwidth Blast Tier 1B	3	1	(\$191.00)	(\$191.00)	\$0.00	\$0.00



## Service Agreement

Sub Totals:	\$1,297.62	\$577.50
LDAC, EUCC and EUCL:	\$115.15	

Federal, State and Local Taxes and Other Charges will be applied in accordance with the definitions stated at <http://www.insidetelepacific.com/rates/rates-telepacific.asp>.

IN WITNESS WHEREOF each Party hereto has caused this Service Agreement to be executed by its duly authorized representative.

#1 (X)

Agreed By, Customer Signature	Date
<i>Bill Mitchell</i>	<i>IT Director</i>
Customer Name (Print)	Title
<i>Late Heard - Zernyung</i>	
Sales Representative Name	Phone
X	
Agreed By, Sales Manager Signature	Date

Order: 262146-040714



**City of Belmont, California**

In addition to the Terms and Conditions to which Customer has agreed on the TAA, Customer and TelePacific agree to amend and modify the Terms and Conditions of the TAA as follows:

**TelePacific Local & Long Distance Calling**

The following per-minute rates for domestic outbound local and long distance calling apply to all TelePacific provisioned voice services.

Call Type	Local (CA)		IntraLATA (CA)	Long Distance	
	Zone 1& 2	Zone 3	IntraLATA Toll	IntraState	InterState
Billing Increments	60/6	60/6	30/6	30/6	30/6
First Minute	\$0.0700	\$0.0700	\$0.059	\$0.059	\$0.059
Additional Minute	\$0.0350	\$0.0350			

Other InterState	Rate
Billing Increments	30/6
Alaska	\$0.11
Guam	\$0.24
Hawaii	\$0.10

The following per-minute rates for domestic outbound long distance calling apply to all non-TelePacific provisioned voice services associated with TelePacific's Switched Long Distance service.

Call Type	IntraLATA (CA)	Long Distance	
	IntraLATA Toll	IntraState	InterState
Billing Increments	30/6	30/6	30/6
Per-Minute Rate	\$0.059	\$0.059	\$0.059

Other InterState	Rate
Billing Increments	30/6
Alaska	\$0.11
Guam	\$0.24
Hawaii	\$0.10

The following per-minute rates for inbound toll free calling apply to all TelePacific Toll Free services.

Call Type	IntraLATA (CA)	Long Distance		Per-call Fee for Calls Originating from a Payphone
	IntraLATA Toll	IntraState	InterState	
Billing Increments	30/6	30/6	30/6	\$0.65
Per-Minute Rate	\$0.059	\$0.059	\$0.059	

Offshore Destinations	Rate
Billing Increments	30/6
Alaska	\$0.25
Canada	\$0.31
Hawaii	\$0.22
Puerto Rico	\$0.31
US Virgin Islands	\$0.31

Each fractional call is rounded to the next whole cent for billing. For every voice channel in which TelePacific is the pre-subscribed outbound long distance carrier, a \$4 monthly recurring fee for the Long Distance Access

Order: 262146-040714



**City of Belmont, California**

In addition to the Terms and Conditions to which Customer has agreed on the TAA, Customer and TelePacific agree to amend and modify the Terms and Conditions of the TAA as follows:



**ADDENDUM TO  
TELECOMMUNICATIONS ACCOUNT AGREEMENT  
(Ethernet Third Party ETF Pass-Through)**

This Addendum to Telecommunications Account Agreement ("Addendum") is made as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between U.S. TelePacific Corp., a California corporation, d/b/a TelePacific Communications, 515 S. Flower Street, 47<sup>th</sup> Floor, Los Angeles, CA 90071-2201 ("TelePacific") and \_\_\_\_\_, a \_\_\_\_\_, headquartered at \_\_\_\_\_ ("Customer").

This Addendum amends and modifies that certain Telecommunications Account Agreement between TelePacific and Customer signed by Customer on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, ("Agreement") for Services as follows:

1. Based on the volume of Services ordered by the Customer and the competitive conditions in the marketplace for telecommunications services, TelePacific shall provide Ethernet Services to Customer with modified Terms and Conditions as set forth below, based upon Customer's commitment to a \_\_\_\_ year ("Initial Term") contract for Ethernet Services and other fees and charges set forth in the Agreement, which is different from those Terms and Conditions used for those same Ethernet Services with others.

2. TelePacific and Customer agree that the Terms and Conditions applicable to the Agreement are hereby amended by adding new sub-section (b)(iii) after sub-section (b)(ii) in Section 4 as follows:

"(iii) Notwithstanding provisions to the contrary in sub-sections (b)(i) and (b)(ii) above, if we terminate this Agreement as a result of your material breach, or you terminate any Ethernet Services provided to you for any reason other than our material breach, we will pass through to you, and you shall pay, any and all termination charges in connection with termination of Services before the end of the term that are imposed on us by the provider of the underlying facilities."

3. Except as modified by this Addendum, the Terms & Conditions to the Agreement shall remain in full force and effect.

U.S. TelePacific Corp.,  
a California corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

#3 { By: \_\_\_\_\_

Name: Bill Mitchell

Title: IT Director

City of Belmont  
110 Sem lane, Belmont CA 94002





## Telecommunications Account Agreement

Must include Service Agreement

This Telecommunications Account Agreement (referred to as "Agreement" or "TAA") is made by and between U.S. TelePacific Corp., a California corporation, dba TelePacific Communications ("TelePacific", also referred to as "our, us, we"), having its principal place of business at 515 S. Flower Street, 47th Floor, Los Angeles, CA 90071-2201 and the Customer described below ("Customer" also referred to as "you, I"), pursuant to the TelePacific Terms and Conditions which are included in summary.

### Section 1 Company Information

Company Legal Name (Individual if Sole Proprietorship) City of Belmont, California

Doing Business As (DBA) \_\_\_\_\_

Legal Composition: ☐ Corporation ☐ Sole Proprietorship ☐ General Partnership ☐ LLP ☐ LLC State Organized: \_\_\_\_\_

Officer/Owner Name & Title \_\_\_\_\_

Officer/Owner Name & Title \_\_\_\_\_

Main Service Address: 110 SEM LN

City BELMONT State CA ZIP Code 94002

Billing Address (if different): One Twin Pines Suite 365

City Belmont State CA ZIP Code 94002

Customer's Email Address bmitchell@belmont.gov

### Section 2 Terms and Conditions Summary

This Agreement you are signing with TelePacific includes the Terms and Conditions set forth on our website at [www.insidetelepacific.com](http://www.insidetelepacific.com) (click on TERMS & CONDITIONS at the bottom of the page), which are incorporated by this reference into the Agreement. Please refer to our website for the full statement of the Terms and Conditions to which you are agreeing. The summary below is only a reference guide and is not meant to change any of the Terms and Conditions.

- 1. General** – This section defines the Services for which you are contracting, how the prices for those Services are determined, special conditions for rates and fees, such as expedite fees, how the rates, terms and conditions may be changed during the contract Term and any rights you have if those changes occur.
- 2. Term, Billing and Payment** - This section covers when the Agreement becomes effective, when the Term starts and renews, how additional Services, if any, are handled, how billing will occur and what is included, how a deposit may be required, what happens if you delay acceptance of the Services, when payment of Invoices is due, how Invoice disputes are handled, late payment fees, actions that may result from late payment or non-payment and the charge for returned checks.
- 3. Customer Obligations** – This section covers your responsibility for any of our property on your premises, for use of our Service and your message content, for compliance with our Acceptable Use Policy (which may change during the Term), for securing your own network against unauthorized use and access and that you have no right to rely on any oral or written statements of our employees contrary to the Customer Obligations Terms and Conditions. Also included is your responsibility to pay any 3<sup>rd</sup> party vendor charges and to arrange for disconnection and payment of charges related to the disconnection of any related services with your current carrier(s).
- 4. Termination** – This section states the rights and duties related to termination of Services or the Agreement, the renewal of the Term, the fees charged for cancellation of an order for Services before the commencement of a Term, how a "material breach" of the Agreement is handled, and whether a fee is incurred for termination of Services or the Agreement before the end of a Term and how it is calculated.

continued on page 2

## Section 2 Terms and Conditions Summary, continued

**5. Warranty, Disclaimer, Limitation of Liability and Indemnity** – This section limits your rights to impose liability for certain damages on us, disclaims certain implied representations and warranties, provides credit allowances under certain conditions for interruptions of Service and outages that you may claim, and defines your obligations, and ours, with regard to indemnity and defense of certain claims.

**6. Miscellaneous Provisions** – This section controls assignment and transfer of the Agreement and Services under it, the law applicable to the Agreement, an exclusion of liability for damages caused by us over which we have no control, how we resolve disputes under the Agreement, the exclusion of any understanding or other agreements from what is contained in the Agreement and its exhibits, and any changes not signed by both you and us, what happens if any provision of the Agreement is found to be invalid or unenforceable, whether the headings of the sections and paragraphs are part of the Agreement, the effect of non-enforcement of any provision of the Agreement, how we will give notice under the Agreement to each other, and a time limitation for the bringing of a legal action under the Agreement

**7. Service Guarantee** – This section provides you with an alternative to continuing with our Services under the Agreement under certain conditions.

## Section 3 Acceptance

#4 Initial BY PLACING YOUR INITIALS IN THE SPACE PROVIDED, YOU ACKNOWLEDGE THAT YOU HAVE REVIEWED AND AGREED TO THE FULL TERMS AND CONDITIONS SET FORTH AT [www.insidetelepacific.com](http://www.insidetelepacific.com) (click on TERMS & CONDITIONS at the bottom of the page), ON THE DATE ENTERED BY YOU BELOW.

#5 Initial BY PLACING YOUR INITIALS IN THE SPACE PROVIDED, YOU ACKNOWLEDGE THAT YOU HAVE REVIEWED AND AGREED TO THE GENERAL SERVICE LEVEL AGREEMENT (SLA) SET FORTH AT [www.insidetelepacific.com](http://www.insidetelepacific.com) (click on SERVICE LEVEL AGREEMENTS at the bottom of the page) ON THE DATE ENTERED BY YOU BELOW

#6 Initial BY PLACING YOUR INITIALS IN THE SPACE PROVIDED, YOU CONSENT TO RECEIVING ELECTRONIC COMMUNICATIONS FROM TELEPACIFIC VIA THE EMAIL ADDRESS PROVIDED IN SECTION 1

By signing below, the person signing on behalf of Customer personally represents and warrants to TelePacific that he or she has the authority and power to sign on behalf of Customer and bind Customer to this Agreement. TelePacific agrees to provide, and the Customer agrees to receive and pay for, those services at locations set forth on the Service Agreement (attached), including any services on subsequent Service Agreements and subsequent changes as long as those changes meet TelePacific's minimum requirements. THIS AGREEMENT INCLUDES AN ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES. This Agreement shall become a binding contract upon execution by Customer and acceptance by TelePacific.

#7

X

Agreed By, Customer Signature

Bill Mitchell

Customer Name (Print)

Kate Heard-Zerny

Sales Representative Name

Date

IT Director

Title

415-794-7708

Phone

X

Agreed By, Sales Manager Signature

Date



## Letter Of Agency

### 1. Customer and Carrier Identification

Current Carriers	<u>Utility Telcom</u>
Contact Name and Title	<u>Bill Mitchell - IT Director</u>
Company Legal Name (Customer)	<u>City of Belmont, California</u>
Service Address (Street/City/State/Zip)	<u>110 SEM LN - , BELMONT, CA 94002</u>
Billing Address (Street/City/State/Zip)	<u>One Twin Pines Suite 365 - , Belmont, CA 94002</u>
Other Company Names (DBA)	

### 2. Billing Telephone Numbers

This authorization covers all customer numbers associated with the Billing Telephone #s listed below:


### 3. Approval

☐ Customer Service Records

To: Current Carrier(s) Listed Above.

Subject: The Customer Identified above hereby authorizes TelePacific Communications to act as its agent in dealing with local companies listed above for the purpose of generating a proposal for TelePacific Communications

☒ Service Change

☐ New Service

I, the undersigned, act on behalf of the company with respect to the telephone number(s) listed above. I authorize TelePacific Communications to act as our agent either to (1) change our telecommunications carrier from current carrier(s) or (2) initiate new service.

☒ Local Service

☒ IntraLata Toll:

Carrier: \_\_\_\_\_

☒ InterLata Long Distance Service:

Carrier: \_\_\_\_\_

or

☐ I want to retain my existing LD carrier on some or all of my telephone numbers.

☐ Specify Intra and InterLata PIC for each telephone number on attachment.

I understand that only one telecommunications carrier may be designated as my primary interexchange carrier for any one telephone number for each (a) IntraLATA Toll and (b) InterLATA Long Distance services. I also understand that if I select no primary interexchange carrier (NO PIC), I will be unable to make IntraLATA Toll and/or InterLATA long distance calls except by using casual dialing. I understand that any change in my primary carrier selection may involve a charge.

### (4) Agreement

Contact Name

Title

Customer Signature

Date

# 8



## T-1 Card Service Addendum

This addendum (the "Addendum"), dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, amends the Telecommunications Account Agreement (the "TAA"), dated \_\_\_\_\_, 20\_\_\_\_, entered into by and between \_\_\_\_\_ ("Customer") and U.S. TelePacific Corp. ("TelePacific"). As amended by this Addendum, the TAA will remain in full force and effect. Capitalized terms used but not defined herein shall have the meaning given such terms in the TAA.

WHEREAS, Customer has entered into a TAA with TelePacific for a Digital T-1 transport service ("Service") at the rates and subject to the terms and conditions contained in the TAA. The Term of the TAA is set forth below in Section 2.

WHEREAS, in order for TelePacific to install the Service, Customer must purchase and install one or more Digital Trunk Interface card(s) ("T-1 Card(s)") to provide access to its customer premises equipment ("CPE") at a location acceptable to TelePacific and in order for Customer to be entitled to the Credit set forth below, Customer must have selected and must maintain TelePacific as Customer's Primary Interexchange Carrier ("PIC") for the entire Term of the TAA.

WHEREAS, TelePacific is willing to provide Customer with an equipment purchase credit ("Credit") to reimburse Customer, at least in part, for the cost of the T-1 Card (s) required for the interconnection of TelePacific's Service with Customer's CPE.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, TelePacific and Customer hereby agree as follows:

1. T-1 Connection. TelePacific will connect the Service to Customer's CPE at the Point of Demarcation. Customer shall connect or arrange for the interconnection (at Customer's sole expense) of the Service with Customer's T-1 Card(s).
2. Equipment Credit. TelePacific will reimburse Customer through the Credit for all or part of the cost of each T-1 Card purchased and installed in order to receive the Service. The total amount of the Credit, per card, shall be equal to the amount actually paid by Customer for the T-1 Card(s), excluding any and all costs of software, T-1 Card installation or programming, or other fees incurred by Customer in connection with the T-1 Card. Further, the Credit but shall not to exceed \$1,000.00. Credits will be applied to Customer's Invoice in twelve (12) equal monthly installments.

The maximum amount of the Credit available to Customer based on the T-1 Cards required and the term of the TAA is as follows:

Card Quantity	TAA Term
<u>1</u>	<u>3</u> Year(s)

TelePacific shall have no obligation to give Customer any part of the Credit until Customer provides, within 60 days after installation of the T-1 Card(s), documentation, acceptable to TelePacific, that proves Customer has purchased and accepted the T-1 Card(s) from Customer's vendor, including the original, unaltered, invoice from Customer's vendor with the vendor's name and address printed thereon, the T-1 Card pricing quotation showing the manufacturer and model number and a copy of the front of Customer's check to the vendor in payment of that invoice ("Proof"). Customer shall return to TelePacific the T-1 Card Rebate Checklist that TelePacific has provided along with the Proof.

3. Application of the Credit. TelePacific shall apply the Credit against the charges on Customer's monthly invoices beginning with the invoice for the next service billing cycle after activation and acceptance by Customer of the Service and receipt by TelePacific of the T-1 Card Rebate Checklist and Proof. The monthly Credit applied on any given invoice shall not exceed \$83.34 per T-1 Card. Customer shall not, under any circumstances, be entitled to receive cash in lieu of the Credit nor shall any Credit be applied toward any termination charges owed by Customer under the terms of the TAA. Customer shall not withhold any payments on TelePacific invoices in anticipation of the application of any Credit(s).



## T-1 Card Service Addendum

4. **Addendum Term.** This Addendum shall become effective on the date first set forth above and shall remain in effect for the term of the TAA unless terminated earlier pursuant to the terms of this Addendum or the TAA.
5. **Covenants of the Customer.** The Customer represents, warrants and covenants that:
- a) Customer will install, the T-1 Card(s), at its expense, within 60 days after the date of this Addendum and shall provide the T-1 Card Rebate Checklist and Proof within 60 days after installation
  - b) It shall constitute a material breach of this Addendum if Customer fails to pay its Equipment vendor for the T-1 card(s) and, if applicable, installation and programming prior to submitting the invoice to TelePacific. Customer may not assign its right to receive a Credit pursuant to this Addendum.
  - c) Customer, or its designee, shall manage and maintain all of its CPE. Customer agrees to look solely to its Equipment vendor if the T-1 Card(s) is defective or there was faulty installation and/or programming of the T-1 Card(s), and hereby agrees to defend, indemnify and hold harmless TelePacific, its officers, directors, affiliates, employees, agents and contractors from any claims or liability relating to Customer's purchase, installation, or programming of the T-1 Card(s) or Customer's inability to use the Service as the result of a defect in or the faulty installation or programming of the T-1 Card(s).
  - d) Customer acknowledges that TelePacific has no responsibility of any kind for the maintenance or repair of the CPE and Customer shall not be relieved of any of its obligations under this Addendum or the TAA to pay for the Service based on problems experienced with Customer's CPE.
6. **Termination; Repayment of the Credit.** If Customer terminates the TAA or fails to designate or maintain TelePacific as Customer's PIC prior to the expiration of the Term of the TAA for any reason other than a material breach by TelePacific of the TAA, Customer will, within thirty (30) days following such termination, repay TelePacific the full amount of the Credit provided to Customer pursuant to Section 2 hereof plus interest from the date the credit was given to Customer by TelePacific until the full amount of the credit is repaid at the lesser of (i) 1.5% per calendar month or any portion of a calendar month, or (ii) the maximum rate permitted by law.

CUSTOMER

U.S. TELEPACIFIC CORP.

#9 {  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Please submit a copy of your original T-1 Card(s) invoice along with the pricing quotation showing the manufacturer and model number of the T1 Card, the T1 Card Checklist and Proof of payment for Equipment credit directly to TelePacific Communications, T1 Card Promotion, 3300 N. Cimarron Road, Las Vegas, NV 89129 within 60 days after installation of the T-1 Card(s). For credit purposes, the envelope containing your checklist, the related invoice and Proof of payment must be postmarked within 60 days after installation of the T-1 Card(s).

Customer Equipment Vendor (T-1Card) name, address and phone number:

Xtelesis - Kevin Oogen  
650-239-1453



## T1 Card Reimbursement Program

Thank you for taking advantage of TelePacific's T1 Card Reimbursement Program. Your business is important to us and we will make every attempt to ensure that you are treated like the valued customer that you are.

Enclosed, please find

- T1 Card Program Checklist.

In order to ensure prompt payment, please send the following information to

**T1 Card Program Manager**  
Customer Care Department  
515 S. Flower Street, 47<sup>th</sup> Floor  
Los Angeles, CA 90071-2201

- Copy of original invoice from vendor
- Proof of payment to vendor for T1 Card
- Completed T1 Card Program Checklist

The above mentioned documentation must be postmarked no later than 30 days after installation of your service.

Should you have any questions, please do not hesitate to contact the T1 Card Program Department toll free at (877) 487-8722, option # 3.

Sincerely,

T1 Card Program Manager

Code: 1003T1/Letter



# T1 Card Program Checklist

Thank you once again for your business. When submitting your T1 Card Program Checklist, please make sure to include the following:

- ☐ Copy of original invoice received from Vendor
- ☐ Proof of payment to the Vendor for T1 Card
- ☐ Completed T1 Card Program Checklist

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Suite #

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip Code

\_\_\_\_\_  
Contact Name (please print)

\_\_\_\_\_  
Email Address

## For Internal Use Only

Amt to be Paid	
T1 Tracker Number	
Received Invoice Date	
Date sent to Revenue Assurance	

Code: 1003T1/Checklist



## Service Agreement

### Section 1 Customer Information

Account Number (existing acct) _____		
Company Legal Name (Individual if Sole Proprietorshi _____		City of Belmont, California
Doing Business As (DBA) _____		
Contact Name and Title <u>Bill Mitchell - IT Director</u>		
Telephone Number <u>650-637-2970</u>	Fax Number _____	Email <u>bmitchell@belmont.gov</u>
Service Address: <u>One Twin Pines Lane -</u>		
City <u>Belmont</u>	State <u>CA</u>	Zip <u>94002</u>

### Section 2 TelePacific Services

TelePacific will provide Customer with the specified type and amount of Services at the rates, and terms and conditions listed below, and Customer shall accept and pay for Services under the Terms and Conditions to which Customer agreed on the Telecommunications Account Agreement that governs this Service Agreement.

Description of Services	Account Term (Yrs)	QTY	Monthly Recurring Charge (MRC)	MRC Total	Set-up Charge (NRC)	NRC Total
CA Caller ID Name	3	1	\$9.50	\$9.50	\$115.00	\$115.00
DID Numbers (blocks of 20)	3	7	\$10.00	\$70.00	\$117.75	\$824.25
Trunk Group Call Forwarding within Switch	3	1	\$15.00	\$15.00	\$40.00	\$40.00
Voice Only PRI (P)	3	1	\$414.12	\$414.12	\$500.00	\$500.00
Install Discount	3	1	\$0.00	\$0.00	(\$739.63)	(\$739.63)
Trunk Max Promotion	3	1	(\$62.12)	(\$62.12)	\$0.00	\$0.00
Trunk Max Promotion - 20k Minute Bundles Per Trunk	3	1	\$280.00	\$280.00	\$0.00	\$0.00
Custom Bill Formatting	0	2	\$0.00	\$0.00	\$0.00	\$0.00
OneCentral	3	1	\$0.00	\$0.00	\$0.00	\$0.00
Double Dash: DID Numbers (up to 100 additional)	3	1	(\$50.00)	(\$50.00)	\$0.00	\$0.00
T1 Card Service Addendum	3	1	\$0.00	\$0.00	\$0.00	\$0.00
Standard Local and Long Distance Rates	3	1	\$0.00	\$0.00	\$0.00	\$0.00
T1 Card Credit	3	1	\$0.00	\$0.00	\$0.00	\$0.00

Sub Totals:	\$676.50	\$739.63
LDAC, EUCC and EUCL:	\$115.15	

Federal, State and Local Taxes and Other Charges will be applied in accordance with the definitions stated at <http://www.insidetelepacific.com/rates/rates-telepacific.asp>.





## Service Agreement

IN WITNESS WHEREOF each Party hereto has caused this Service Agreement to be executed by its duly authorized representative.

#1 (X)

Agreed By, Customer Signature

*Bill Mitchell*

Date

*IT Director*

Customer Name (Print)

*Late Heard - Zeryny*

Title

*415-794-7708*

Sales Representative Name

Phone

X

Agreed By, Sales Manager Signature

Date



## Service Agreement

### Section 1 Customer Information

Account Number (existing acct)			
Company Legal Name (Individual if Sole Proprietorshi		City of Belmont, California	
Doing Business As (DBA)			
Contact Name and Title Bill Mitchell - IT Director			
Telephone Number	650-637-2970	Fax Number	Email bmittell@belmont.gov
Service Address: One Twin Pines Lane -			
City	Belmont	State	CA Zip 94002

### Section 2 TelePacific Services

TelePacific will provide Customer with the specified type and amount of Services at the rates, and terms and conditions listed below, and Customer shall accept and pay for Services under the Terms and Conditions to which Customer agreed on the Telecommunications Account Agreement that governs this Service Agreement.

Description of Services	Account Term (Yrs)	QTY	Monthly Recurring Charge (MRC)	MRC Total	Set-up Charge (NRC)	NRC Total
CA Caller ID Name	3	1	\$9.50	\$9.50	\$115.00	\$115.00
Trunk Group Call Forwarding within Switch	3	1	\$15.00	\$15.00	\$40.00	\$40.00
Voice Only PRI (P)	3	1	\$414.12	\$414.12	\$500.00	\$500.00
Install Discount	3	1	\$0.00	\$0.00	(\$327.50)	(\$327.50)
Custom Bill Formatting	0	2	\$0.00	\$0.00	\$0.00	\$0.00
OneCentral	3	1	\$0.00	\$0.00	\$0.00	\$0.00
Standard Local and Long Distance Rates	3	1	\$0.00	\$0.00	\$0.00	\$0.00

Sub Totals:	\$438.62	\$327.50
LDAC, EUCC and EUCL:	\$115.15	

Federal, State and Local Taxes and Other Charges will be applied in accordance with the definitions stated at <http://www.insidetelepacific.com/rates/rates-telepacific.asp>.

IN WITNESS WHEREOF each Party hereto has caused this Service Agreement to be executed by its duly authorized representative.

#2 (X)

Agreed By, Customer Signature

Bill Mitchell

Customer Name (Print)

Date

IT Director

Title



**Service Agreement**

Late Heard - Tony  
Sales Representative Name

415-794-7708  
Phone

X \_\_\_\_\_  
Agreed By, Sales Manager Signature

\_\_\_\_\_  
Date

Order: 262142-040714



**City of Belmont, California**

In addition to the Terms and Conditions to which Customer has agreed on the TAA, Customer and TelePacific agree to amend and modify the Terms and Conditions of the TAA as follows:

**TelePacific Local & Long Distance Calling**

The following per-minute rates for domestic outbound local and long distance calling apply to all TelePacific provisioned voice services.

Call Type	Local (CA)		IntraLATA (CA)	Long Distance	
	Zone 1& 2	Zone 3	IntraLATA Toll	IntraState	InterState
Billing Increments	60/6	60/6	30/6	30/6	30/6
First Minute	\$0.0700	\$0.0700	\$0.059	\$0.059	\$0.059
Additional Minute	\$0.0350	\$0.0350			

Other InterState	Rate
Billing Increments	30/6
Alaska	\$0.11
Guam	\$0.24
Hawaii	\$0.10

The following per-minute rates for domestic outbound long distance calling apply to all non-TelePacific provisioned voice services associated with TelePacific's Switched Long Distance service.

Call Type	IntraLATA (CA)	Long Distance	
	IntraLATA Toll	IntraState	InterState
Billing Increments	30/6	30/6	30/6
Per-Minute Rate	\$0.059	\$0.059	\$0.059

Other InterState	Rate
Billing Increments	30/6
Alaska	\$0.11
Guam	\$0.24
Hawaii	\$0.10

The following per-minute rates for inbound toll free calling apply to all TelePacific Toll Free services.

Call Type	IntraLATA (CA)	Long Distance		Per-call Fee for Calls Originating from a Payphone
	IntraLATA Toll	IntraState	InterState	
Billing Increments	30/6	30/6	30/6	\$0.65
Per-Minute Rate	\$0.059	\$0.059	\$0.059	

Offshore Destinations	Rate
Billing Increments	30/6
Alaska	\$0.25
Canada	\$0.31
Hawaii	\$0.22
Puerto Rico	\$0.31
US Virgin Islands	\$0.31

Each fractional call is rounded to the next whole cent for billing. For every voice channel in which TelePacific is the pre-subscribed outbound long distance carrier, a \$4 monthly recurring fee for the Long Distance Access

**Order: 262143-040714**

**City of Belmont, California**



In addition to the Terms and Conditions to which Customer has agreed on the TAA, Customer and TelePacific agree to amend and modify the Terms and Conditions of the TAA as follows:



## Telecommunications Account Agreement

Must include Service Agreement

This Telecommunications Account Agreement (referred to as "Agreement" or "TAA") is made by and between U.S. TelePacific Corp., a California corporation, dba TelePacific Communications ("TelePacific", also referred to as "our, us, we"), having its principal place of business at 515 S. Flower Street, 47th Floor, Los Angeles, CA 90071-2201 and the Customer described below ("Customer" also referred to as "you, I"), pursuant to the TelePacific Terms and Conditions which are included in summary.

### Section 1 Company Information

Company Legal Name (Individual if Sole Proprietorship) City of Belmont, California

Doing Business As (DBA) \_\_\_\_\_

Legal Composition: ☐ Corporation ☐ Sole Proprietorship ☐ General Partnership ☐ LLP ☐ LLC State Organized: \_\_\_\_\_

Officer/Owner Name & Title \_\_\_\_\_

Officer/Owner Name & Title \_\_\_\_\_

Main Service Address: One Twin Pines Lane

City Belmont State CA ZIP Code 94002

Billing Address (if different): One Twin Pines Lane Suite 365

City Belmont State CA ZIP Code 94002

Customer's Email Address bmitchell@belmont.gov

### Section 2 Terms and Conditions Summary

This Agreement you are signing with TelePacific includes the Terms and Conditions set forth on our website at [www.insidetelepacific.com](http://www.insidetelepacific.com) (click on TERMS & CONDITIONS at the bottom of the page), which are incorporated by this reference into the Agreement. Please refer to our website for the full statement of the Terms and Conditions to which you are agreeing. The summary below is only a reference guide and is not meant to change any of the Terms and Conditions.

**1. General** – This section defines the Services for which you are contracting, how the prices for those Services are determined, special conditions for rates and fees, such as expedite fees, how the rates, terms and conditions may be changed during the contract Term and any rights you have if those changes occur.

**2. Term, Billing and Payment** - This section covers when the Agreement becomes effective, when the Term starts and renews, how additional Services, if any, are handled, how billing will occur and what is included, how a deposit may be required, what happens if you delay acceptance of the Services, when payment of Invoices is due, how Invoice disputes are handled, late payment fees, actions that may result from late payment or non-payment and the charge for returned checks.

**3. Customer Obligations** – This section covers your responsibility for any of our property on your premises, for use of our Service and your message content, for compliance with our Acceptable Use Policy (which may change during the Term), for securing your own network against unauthorized use and access and that you have no right to rely on any oral or written statements of our employees contrary to the Customer Obligations Terms and Conditions. Also included is your responsibility to pay any 3<sup>rd</sup> party vendor charges and to arrange for disconnection and payment of charges related to the disconnection of any related services with your current carrier(s).

**4. Termination** – This section states the rights and duties related to termination of Services or the Agreement, the renewal of the Term, the fees charged for cancellation of an order for Services before the commencement of a Term, how a "material breach" of the Agreement is handled, and whether a fee is incurred for termination of Services or the Agreement before the end of a Term and how it is calculated.

continued on page 2

## Section 2 Terms and Conditions Summary, continued

**5. Warranty, Disclaimer, Limitation of Liability and Indemnity** – This section limits your rights to impose liability for certain damages on us, disclaims certain implied representations and warranties, provides credit allowances under certain conditions for interruptions of Service and outages that you may claim, and defines your obligations, and ours, with regard to indemnity and defense of certain claims.

**6. Miscellaneous Provisions** – This section controls assignment and transfer of the Agreement and Services under it, the law applicable to the Agreement, an exclusion of liability for damages caused by us over which we have no control, how we resolve disputes under the Agreement, the exclusion of any understanding or other agreements from what is contained in the Agreement and its exhibits, and any changes not signed by both you and us, what happens if any provision of the Agreement is found to be invalid or unenforceable, whether the headings of the sections and paragraphs are part of the Agreement, the effect of non-enforcement of any provision of the Agreement, how we will give notice under the Agreement to each other, and a time limitation for the bringing of a legal action under the Agreement

**7. Service Guarantee** – This section provides you with an alternative to continuing with our Services under the Agreement under certain conditions.

## Section 3 Acceptance

#4 →  BY PLACING YOUR INITIALS IN THE SPACE PROVIDED, YOU ACKNOWLEDGE THAT YOU HAVE REVIEWED AND AGREED TO THE FULL TERMS AND CONDITIONS SET FORTH AT [www.insidetelepacific.com](http://www.insidetelepacific.com) (click on TERMS & CONDITIONS at the bottom of the page), ON THE DATE ENTERED BY YOU BELOW.

#5 →  BY PLACING YOUR INITIALS IN THE SPACE PROVIDED, YOU ACKNOWLEDGE THAT YOU HAVE REVIEWED AND AGREED TO THE GENERAL SERVICE LEVEL AGREEMENT (SLA) SET FORTH AT [www.insidetelepacific.com](http://www.insidetelepacific.com) (click on SERVICE LEVEL AGREEMENTS at the bottom of the page) ON THE DATE ENTERED BY YOU BELOW

#6 →  BY PLACING YOUR INITIALS IN THE SPACE PROVIDED, YOU CONSENT TO RECEIVING ELECTRONIC COMMUNICATIONS FROM TELEPACIFIC VIA THE EMAIL ADDRESS PROVIDED IN SECTION 1

By signing below, the person signing on behalf of Customer personally represents and warrants to TelePacific that he or she has the authority and power to sign on behalf of Customer and bind Customer to this Agreement. TelePacific agrees to provide, and the Customer agrees to receive and pay for, those services at locations set forth on the Service Agreement (attached), including any services on subsequent Service Agreements and subsequent changes as long as those changes meet TelePacific's minimum requirements. THIS AGREEMENT INCLUDES AN ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES. This Agreement shall become a binding contract upon execution by Customer and acceptance by TelePacific.

#7 (X) \_\_\_\_\_  
Agreed By, Customer Signature

\_\_\_\_\_ Date

Bill Mitchell  
Customer Name (Print)

IT Director  
Title

Kate Heard - Zeryny  
Sales Representative Name

415-794-7708  
Phone

X \_\_\_\_\_

Agreed By, Sales Manager Signature

\_\_\_\_\_ Date



## Letter Of Agency

### 1. Customer and Carrier Identification

Current Carriers Utility Telcom

Contact Name and Title Bill Mitchell - IT Director

Company Legal Name (Customer City of Belmont, California

Service Address (Street/City/State/Zip) One Twin Pines Lane - , Belmont, CA 94002

Billing Address (Street/City/State/Zip) One Twin Pines Lane - , Belmont, CA 94002

Other Company Names (DBA) \_\_\_\_\_

### 2. Billing Telephone Numbers

This authorization covers all customer numbers associated with the Billing Telephone #s listed below:


### 3. Approval

☐ Customer Service Records

To: Current Carrier(s) Listed Above.

Subject: The Customer Identified above hereby authorizes TelePacific Communications to act as its agent in dealing with local companies listed above for the purpose of generating a proposal for TelePacific Communications

☒ Service Change

☐ New Service

I, the undersigned, act on behalf of the company with respect to the telephone number(s) listed above. I authorize TelePacific Communications to act as our agent either to (1) change our telecommunications carrier from current carrier(s) or (2) initiate new service.

☒ Local Service

☒ IntraLata Toll:

Carrier: \_\_\_\_\_

☒ InterLata Long Distance Service:

Carrier: \_\_\_\_\_

or

☐ I want to retain my existing LD carrier on some or all of my telephone numbers.

☐ Specify Intra and InterLata PIC for each telephone number on attachment.

I understand that only one telecommunications carrier may be designated as my primary interexchange carrier for any one telephone number for each (a) IntraLATA Toll and (b) InterLATA Long Distance services. I also understand that if I select no primary interexchange carrier (NO PIC), I will be unable to make IntraLATA Toll and/or InterLATA long distance calls except by using casual dialing. I understand that any change in my primary carrier selection may involve a charge.

### (4) Agreement

Contact Name

Title

Customer Signature

Date





#9

## Application for Credit

Please complete all sections completely and legibly. Incomplete applications can not be processed.

The information below is warranted to be true and correct by the below named Customer and is given for the purpose of obtaining credit from TelePacific. Customer authorizes TelePacific to conduct a routine credit check in connection with its application for service. TelePacific will keep such information confidential and only use it for the purpose of evaluating Customer's credit in connection with Customer's application for service. This application for credit shall be construed in accordance with the laws of the State of California.

### Section 1 Customer Information (please complete all sections completely and legibly)

Company Legal Name (Customer) City of Belmont, California

Doing Business As (DBA) \_\_\_\_\_

Legal Composition: ☐ Corporation ☐ Sole Proprietorship ☐ General Partnership ☐ LLP ☐ LLC State Organized: \_\_\_\_\_

☒ Federal Tax I.D. \_\_\_\_\_ Exempt? (circle) No Yes

Business Type: \_\_\_\_\_

State Tax Info: Tax Exempt# \_\_\_\_\_

Dun & Bradstreet # (D&B) \_\_\_\_\_

Process as Personal Guarantee ☐ (Mark if Applicable)

Officer/Owner Name & Title \_\_\_\_\_ Social Security # \_\_\_\_\_

Officer/Owner Name & Title \_\_\_\_\_ Social Security # \_\_\_\_\_

Current Carrier Reference: Carrier Name \_\_\_\_\_

Account #: \_\_\_\_\_ Phone #: \_\_\_\_\_ Length of Service: \_\_\_\_\_

Estimated Monthly Long Distance Usage \_\_\_\_\_ Estimated International Usage \_\_\_\_\_ International Block? (circle) No Yes

Main Service Address: One Twin Pines Lane

City Belmont State CA ZIP Code 94002

Billing Address (if different): One Twin Pines Lane

City Belmont State CA ZIP Code 94002



Agreed By, Customer Signature

Bill Mitchell

Customer Name (Print)

Late Heard - Zengy

Sales Representative Name

Date

IT Director

Title

4157947708

Phone



#10

## Customer Contact Authority

TelePacific is committed to protecting the proprietary information (CPNI) you have entrusted to us. Pursuant to FCC rules, effective 12/8/2007, we have implemented policies and procedures designed to better protect your network information against unauthorized access. Please assist us by providing complete contact information for parties authorized to receive information regarding your account.

"I grant permission to TelePacific to provide information to the following individuals for the purpose of servicing my telecommunications account, including: the review of network, service, and billing records; negotiation of service changes; and resolution of network and billing issues that may arise on my account. Identified below are authorized account contacts and their respective authority level for each organizational area within my company."

Account Number:

New Account #

Printed Name:

Bill Mitchell

Title:

IT Director

Date:



Authorized Signature:

## Authority Levels:

**R/W/A: (Read/Write/All)** This contact has full authority to request information and place orders on all aspects of the account including bill usage and network configuration.

**R/W/B: (Read/Write/Bill)** This contact has the authority to ask questions about billing issues and request bill related changes on the account such as the billing address.

**R/W/O: (Read/Write/Orders)** This contact can receive information about the network configuration on an account including line type, count, and physical and data configuration. This contact is authorized to place orders on the account including reconfigures, moves, adds, changes, new locations, etc.

**R/O: (Read/Only)** This type of contact is allowed to request and receive information regarding bills, network configuration, and orders, but is not authorized to make changes on accounts or orders.

**R/T: (Read/Trouble)** This authority level is allowed to report trouble on accounts, receive network configuration information in support of resolving trouble on the account.

Note: TelePacific may send emails to inform customers of other related services and other information. TelePacific does not sell personal information and personal information is not given to a third party unless authorized by the customer in writing or required pursuant to contracts authorized by law.

## ACCOUNT CONTACTS:

## PRIMARY ACCOUNT AUTHORITY/ AUTHORIZED SIGNEE

☐ Do not send marketing emailName Bill MitchellTitle IT DirectorPhone 6506372970

Cell \_\_\_\_\_

Email bmitchell@belmont.gov

Fax \_\_\_\_\_

Auth Level

☒ RWA ☐ RWB ☐ RWO ☐ RO ☐ RT

(circle appropriate authorization level)

## ALTERNATE PRIMARY ACCOUNT AUTHORITY

☐ Do not send marketing email

Name \_\_\_\_\_

Title \_\_\_\_\_

Phone \_\_\_\_\_

Cell \_\_\_\_\_

Email \_\_\_\_\_

Fax \_\_\_\_\_

Auth Level

☐ RWA ☐ RWB ☐ RWO ☐ RO ☐ RT

(circle appropriate authorization level)

## ACCOUNT BILLING CONTACT

☐ Do not send marketing emailName Bill MitchellTitle IT DirectorPhone 6506372970

Cell \_\_\_\_\_

Email bmitchell@belmont.gov

Fax \_\_\_\_\_

Auth Level

☐ RWA ☐ RWB ☐ RWO ☐ RO ☐ RT

(circle appropriate authorization level)

<b>ONECENTRAL CONTACT</b>		<input checked="" type="checkbox"/> Do not send marketing email
Name	Bill Mitchell	Title
Phone	6506372970	Cell
Email	bmitchell@belmont.gov	Fax
Auth Level	RWA RWB RWO RO RT	(circle appropriate authorization level)

<b>MAIN TECHNICAL CONTACT</b>		<input checked="" type="checkbox"/> Do not send marketing email
Name	Bill Mitchell	Title <b>IT Director</b>
Phone	6506372970	Cell
Email	bmitchell@belmont.gov	Fax
Auth Level	RWA RWB RWO RO RT	(circle appropriate authorization level)

<b>ALTERNATE TECHNICAL CONTACT</b>		<input type="checkbox"/> Do not send marketing email
Name		Title
Phone		Cell
Email		Fax
Auth Level	RWA RWB RWO RO RT	(circle appropriate authorization level)

<b>MAIN DATA CONTACT/LAN ADMINISTRATOR</b>		<input type="checkbox"/> Do not send marketing email
Name	Bill Mitchell	Title <b>IT Director</b>
Phone	6506372970	Cell
Email	bmitchell@belmont.gov	Fax
Auth Level	RWA RWB RWO RO RT	(circle appropriate authorization level)

#### ORDER CONTACTS:

<b>PRIMARY ORDER PROVISIONING CONTACT</b>		<input checked="" type="checkbox"/> Same as Main Tech Cont <input type="checkbox"/> Do not send marketing email
Name	Bill Mitchell	Title <b>IT Director</b>
Phone	6506372970	Cell
Email	bmitchell@belmont.gov	Fax
Auth Level	RWA RWB RWO RO RT	(circle appropriate authorization level)

<b>ALTERNATE ORDER PROVISIONING CONTACT</b>		<input type="checkbox"/> Do not send marketing email
Name		Title
Phone		Cell
Email		Fax
Auth Level	RWA RWB RWO RO RT	(circle appropriate authorization level)

<b>AFTER HOURS CONTACT</b>		<input type="checkbox"/> Do not send marketing email
Name		Title
Phone		Cell
Email		Fax
Auth Level	RWA RWB RWO RO RT	(circle appropriate authorization level)

Mail: TelePacific Communications, Attn: Customer Care, 3485 Brookside Dr. Suite 102, Stockton, CA 95219  
 Email: Scan signed documents and send to: [customerservice@telepacific.net](mailto:customerservice@telepacific.net) Fax: 866-891-2088 Initial \_\_\_\_\_



## T-1 Card Service Addendum

This addendum (the "Addendum"), dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, amends the Telecommunications Account Agreement (the "TAA"), dated \_\_\_\_\_, 20\_\_\_\_, entered into by and between \_\_\_\_\_ ("Customer") and U.S. TelePacific Corp. ("TelePacific"). As amended by this Addendum, the TAA will remain in full force and effect. Capitalized terms used but not defined herein shall have the meaning given such terms in the TAA.

WHEREAS, Customer has entered into a TAA with TelePacific for a Digital T-1 transport service ("Service") at the rates and subject to the terms and conditions contained in the TAA. The Term of the TAA is set forth below in Section 2.

WHEREAS, in order for TelePacific to install the Service, Customer must purchase and install one or more Digital Trunk Interface card(s) ("T-1 Card(s)") to provide access to its customer premises equipment ("CPE") at a location acceptable to TelePacific and in order for Customer to be entitled to the Credit set forth below, Customer must have selected and must maintain TelePacific as Customer's Primary Interexchange Carrier ("PIC") for the entire Term of the TAA.

WHEREAS, TelePacific is willing to provide Customer with an equipment purchase credit ("Credit") to reimburse Customer, at least in part, for the cost of the T-1 Card (s) required for the interconnection of TelePacific's Service with Customer's CPE.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, TelePacific and Customer hereby agree as follows:

1. **T-1 Connection.** TelePacific will connect the Service to Customer's CPE at the Point of Demarcation. Customer shall connect or arrange for the interconnection (at Customer's sole expense) of the Service with Customer's T-1 Card(s).
2. **Equipment Credit.** TelePacific will reimburse Customer through the Credit for all or part of the cost of each T-1 Card purchased and installed in order to receive the Service. The total amount of the Credit, per card, shall be equal to the amount actually paid by Customer for the T-1 Card(s), excluding any and all costs of software, T-1 Card installation or programming, or other fees incurred by Customer in connection with the T-1 Card. Further, the Credit but shall not to exceed \$1,000.00. Credits will be applied to Customer's Invoice in twelve (12) equal monthly installments.

The maximum amount of the Credit available to Customer based on the T-1 Cards required and the term of the TAA is as follows:

Card Quantity	TAA Term
<u>1</u>	<u>3</u> Year(s)

TelePacific shall have no obligation to give Customer any part of the Credit until Customer provides, within 60 days after installation of the T-1 Card(s), documentation, acceptable to TelePacific, that proves Customer has purchased and accepted the T-1 Card(s) from Customer's vendor, including the original, unaltered, invoice from Customer's vendor with the vendor's name and address printed thereon, the T-1 Card pricing quotation showing the manufacturer and model number and a copy of the front of Customer's check to the vendor in payment of that invoice ("Proof"). Customer shall return to TelePacific the T-1 Card Rebate Checklist that TelePacific has provided along with the Proof.

3. **Application of the Credit.** TelePacific shall apply the Credit against the charges on Customer's monthly invoices beginning with the invoice for the next service billing cycle after activation and acceptance by Customer of the Service and receipt by TelePacific of the T-1 Card Rebate Checklist and Proof. The monthly Credit applied on any given invoice shall not exceed \$83.34 per T-1 Card. Customer shall not, under any circumstances, be entitled to receive cash in lieu of the Credit nor shall any Credit be applied toward any termination charges owed by Customer under the terms of the TAA. Customer shall not withhold any payments on TelePacific invoices in anticipation of the application of any Credit(s).



## T-1 Card Service Addendum

4. Addendum Term. This Addendum shall become effective on the date first set forth above and shall remain in effect for the term of the TAA unless terminated earlier pursuant to the terms of this Addendum or the TAA.
5. Covenants of the Customer. The Customer represents, warrants and covenants that:
- a) Customer will install, the T-1 Card(s), at its expense, within 60 days after the date of this Addendum and shall provide the T-1 Card Rebate Checklist and Proof within 60 days after installation
  - b) It shall constitute a material breach of this Addendum if Customer fails to pay its Equipment vendor for the T-1 card(s) and, if applicable, installation and programming prior to submitting the invoice to TelePacific. Customer may not assign its right to receive a Credit pursuant to this Addendum.
  - c) Customer, or its designee, shall manage and maintain all of its CPE. Customer agrees to look solely to its Equipment vendor if the T-1 Card(s) is defective or there was faulty installation and/or programming of the T-1 Card(s), and hereby agrees to defend, indemnify and hold harmless TelePacific, its officers, directors, affiliates, employees, agents and contractors from any claims or liability relating to Customer's purchase, installation, or programming of the T-1 Card(s) or Customer's inability to use the Service as the result of a defect in or the faulty installation or programming of the T-1 Card(s).
  - d) Customer acknowledges that TelePacific has no responsibility of any kind for the maintenance or repair of the CPE and Customer shall not be relieved of any of its obligations under this Addendum or the TAA to pay for the Service based on problems experienced with Customer's CPE.
6. Termination; Repayment of the Credit. If Customer terminates the TAA or fails to designate or maintain TelePacific as Customer's PIC prior to the expiration of the Term of the TAA for any reason other than a material breach by TelePacific of the TAA, Customer will, within thirty (30) days following such termination, repay TelePacific the full amount of the Credit provided to Customer pursuant to Section 2 hereof plus interest from the date the credit was given to Customer by TelePacific until the full amount of the credit is repaid at the lesser of (i) 1.5% per calendar month or any portion of a calendar month, or (ii) the maximum rate permitted by law.

CUSTOMER

U.S. TELEPACIFIC CORP.

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Please submit a copy of your original T-1 Card(s) invoice along with the pricing quotation showing the manufacturer and model number of the T1 Card, the T1 Card Checklist and Proof of payment for Equipment credit directly to TelePacific Communications, T1 Card Promotion, 3300 N. Cimarron Road, Las Vegas, NV 89129 within 60 days after installation of the T-1 Card(s). For credit purposes, the envelope containing your checklist, the related invoice and Proof of payment must be postmarked within 60 days after installation of the T-1 Card(s).

Customer Equipment Vendor (T-1Card) name, address and phone number:

Xtelasis - Kevin Dyer  
650-239-1453



## T1 Card Reimbursement Program

Thank you for taking advantage of TelePacific's T1 Card Reimbursement Program. Your business is important to us and we will make every attempt to ensure that you are treated like the valued customer that you are.

Enclosed, please find

- T1 Card Program Checklist.

In order to ensure prompt payment, please send the following information to

**T1 Card Program Manager**  
Customer Care Department  
515 S. Flower Street, 47<sup>th</sup> Floor  
Los Angeles, CA 90071-2201

- Copy of original invoice from vendor
- Proof of payment to vendor for T1 Card
- Completed T1 Card Program Checklist

The above mentioned documentation must be postmarked no later than 30 days after installation of your service.

Should you have any questions, please do not hesitate to contact the T1 Card Program Department toll free at (877) 487-8722, option # 3.

Sincerely,

T1 Card Program Manager

*Fax docs to:  
When Install is completed  
and Bill has been  
paid*

Code: 1003T1/Letter



# T1 Card Program Checklist

Thank you once again for your business. When submitting your T1 Card Program Checklist, please make sure to include the following:

- ☐ Copy of original invoice received from Vendor
- ☐ Proof of payment to the Vendor for T1 Card
- ☐ Completed T1 Card Program Checklist

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Suite #

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip Code

\_\_\_\_\_  
Contact Name (please print)

\_\_\_\_\_  
Email Address

## For Internal Use Only

Amt to be Paid	
T1 Tracker Number	
Received Invoice Date	
Date sent to Revenue Assurance	

Code: 1003T1/Checklist

**1. General**

(a) These Terms and Conditions are part of the Telecommunications Account Agreement (referred to as "Agreement") between Customer (referred to as "you" and "your") and U.S. TelePacific Corp. and/or its affiliated companies (collectively referred to as "we", "us" and "our"). Services are offered to you by us either under Tariffs (documents which list services, prices and other terms and conditions) filed with the Federal Communications Commission (FCC) and state regulatory agencies having jurisdiction over the Services ("Tariffed Services"), or on a non-Tariffed basis. Tariffs are available online at [www.insidetelepacific.com](http://www.insidetelepacific.com). All services provided under this Agreement are collectively referred to as the "Services." In the event that the rates, terms and conditions in this Agreement conflict at any time with those set forth in our federal and/or state Tariffs applicable to the Services, the rates, terms and conditions of the Tariffs shall control. The rates, terms and conditions of Tariffed Services may change, subject to the approval of the applicable regulatory agency. If the Tariffs for any Services are cancelled as a result of regulatory action during the term of this Agreement, we will publish a Price List and related terms and conditions on our website ([www.insidetelepacific.com](http://www.insidetelepacific.com)) which will become part of this Agreement.

(b) We may increase the rates in this Agreement for non-Tariffed Services to pass through any price increases imposed on us by the providers of the underlying facilities used to provide the Services or, in the case of long distance services, by our wholesale providers of such services. We may also change the rates, terms and conditions applicable to non-Tariffed Services ("Revisions") by giving you at least thirty (30) days prior written notice and posting such Revisions to our website at [www.insidetelepacific.com](http://www.insidetelepacific.com). You will receive notice of the Revisions in your monthly invoice at least thirty (30) days prior to the effective date of any change. You shall then have thirty (30) calendar days from the date of the aforementioned invoice to provide us with written notice that the Revisions to changed terms or conditions adversely affect your use of the Service(s). If after said notice, we are able to verify such adverse effect and are able to eliminate said adverse effect, we shall provide you with a written addendum to this Agreement to confirm your assent to our elimination of the adverse effect on your Service(s). However, if we are unable reasonably to eliminate the Revision's impact on such Service(s), we will send you written notice of our inability to reasonably eliminate the Revision's impact, and then you may terminate the impacted Service(s) without further obligation to us beyond the termination date, including termination charges, if any. This shall be your sole and exclusive remedy for changed terms or conditions. If you do not notify us in writing of your election to terminate the affected Service(s) for changed terms or conditions within five (5) business days after receipt of written notice of our inability to reasonably eliminate the Revision's impact, you will be deemed to have consented to the changes and to a continuation of the Service(s), subject to the Revisions. If we materially increase the rates applicable to any of our non-tariffed Services, except for pass-through rate increases, you may terminate the affected Service(s) without further obligation beyond the termination date, including termination charges, if any, provided you notify us in writing before the effective date of the rate increase. If you do not notify us in writing of your election to terminate the affected Service(s) for increase in rates prior to the effective date of the rate increase, you will be deemed to have consented to the changes and to a continuation of the Service(s) subject to the Revisions.

(c) Under certain conditions, you may request that installation of Services be expedited by agreeing to pay an Expedite Fee. No projected date for expedited installation is guaranteed. Payment of the Expedite Fee only earns an advanced priority for your installation process and installation is not entirely in our control. No credit or refund of the Expedite Fee will be made for delay of the installation date beyond the projected or requested date. A list of Expedite Fees and other charges for Changes to Services ordered are available at: [www.insidetelepacific.com](http://www.insidetelepacific.com).

(d) We reserve the right to provide Services to you via our choice of technology and to change the manner in which we deliver Services at any time in our sole discretion provided the functionality of the Service provided remains substantially unaffected by the change.



**2. Term, Billing, and Payment**

(a) **Effective Date.** This Agreement is effective when it has been signed by you and accepted by TelePacific either by execution on behalf of TelePacific or by TelePacific commencing the Services delivery process. Upon approval, we will begin as soon as practicable the installation, connection and testing of the circuits and/or equipment necessary to provide the Services.

(b) **Term.** The initial term of this Agreement ("Initial Term") will begin the date we provide notice to you that the Services are available for your use. This Agreement will continue in effect for the entire Term chosen on the Service Agreement and for any subsequent Renewal Term. The Initial Term or Renewal Term (also referred to herein and on the Service Agreement as "Service Term") will automatically renew for successive Renewal Terms ("Automatic Renewal Term") of one (1) year each thereafter, unless terminated as provided in Section 4 of this Agreement. However, you may renew Services for a Renewal Term prior to the completion of the Initial Term. The beginning of this Non-Automatic Renewal Term is the date of the first invoice after the Service Renewal is entered into our billing system. You may order additional services at your existing Service Location(s) under this Agreement for which Service(s) shall have an Initial Term coterminous with the Initial or Renewal Term of the existing Service(s) at said Service Location, subject to our acceptance. Services for additional Service Locations may also be ordered, subject to our acceptance, under this Agreement. The Initial Term for additional Services ordered for additional Service Locations will begin the date we provide notice to you that the services are available for your use, will continue in effect for the entire Term specified on the Service Agreement for the additional Services and shall automatically renew for successive periods of one (1) year each after the end of the Initial Term of the additional Services (each successive period being a Renewal Term for those additional Services), unless terminated as provided in Section 4 of this Agreement. The Terms and Conditions of this Agreement shall extend automatically, following termination, to cover the remaining Term of any Services provided. See Section 4 of this Agreement for additional terms and conditions applicable to terminations and Renewal Terms, including the rates during Renewal Terms.

(c) **Billing.** We will begin invoicing you for the Services and other charges after giving you notice that the Services are installed and available for your use and will continue invoicing you on a monthly basis until the Agreement is terminated. We will bill monthly recurring charges in advance and usage charges after the usage occurs. You are responsible for all Other Charges and Government Fees and Taxes which will be separately listed on each invoice. We may require, in our sole discretion, that you provide a deposit or other assurance of payment before the Services are provided and/or thereafter. Any required deposit shall not bear interest unless required by law. If you delay acceptance of the Services after receiving notice that Services are available, we may, in our sole discretion, begin invoicing you for the ordered Services. If you continue to delay acceptance of the Services for more than 60 days after the date the Services are available, you will have materially breached this Agreement, and we will be entitled to terminate this Agreement without further notice and to pursue the remedies in Section 4 of this Agreement.

(d) **Back-billing.** We will endeavor to bill you for charges on a timely basis. However, unless proscribed by state regulation, you shall nevertheless be liable for all charges irrespective of any delay in billing, whether due to error, lack of necessary data, negligence or any other reason. No such delay shall constitute a basis for a claim of waiver, estoppel or other excuse of your obligation to pay our charges, irrespective of the length of the delay. Nothing herein shall toll the running of any statute of limitations applicable to such obligations.

(e) **Payment.** Invoices are due and payable upon presentation, and become past due after the Pay By Date printed on the invoice. If you have a bona fide dispute with any of the amounts on the invoice ("Disputed Amount"), you shall pay all amounts not in dispute by the Pay By Date and provide us with a written request for a billing adjustment, together with all supporting documentation, within 45 days after the Pay By Date or your right to any billing adjustment shall be waived. If we agree to adjust all or a portion of the Disputed Amount, you will not be obligated to pay a late payment charge on the adjusted amount. If you fail to pay all non-Disputed charges on our invoice by the Pay By Date, we may impose a late payment charge of 1.5% per month or the maximum rate allowed by law, whichever is less, on the unpaid balance until the amount is paid. We may also suspend your services until all delinquent



amounts, including late payment charges, are paid in full. An additional charge will apply to each returned check.

(f) If the Initial Term is for sixty (60) months or more and Services have been installed for at least twenty-four (24) months, Customer may provide TelePacific at [retention@telepacific.com](mailto:retention@telepacific.com) with a bona fide, written quote of a lower monthly charge for a term at least equivalent to the remaining months in the Initial Term from a competitive carrier for the identical Services with the same terms as provided pursuant to this Agreement and all Addendums, one time, and TelePacific shall have thirty (30) calendar days after receipt of the bona fide written quote to match or beat the competitive carrier's offer. "Identical," as used herein, is to be narrowly construed to mean the Services and all terms and conditions must be the same in all material respects. If for any reason TelePacific fails to provide the Services at the lower rate, Customer may terminate the Services without liability for early termination.

### 3. Your Obligations

(a) Our Property. Any equipment installed at your premises by us or shipped to you by TelePacific or our authorized third party vendor remains our personal property, and nothing contained in this Agreement shall give or convey to you any right, title or interest in such equipment. You agree not to interfere with or damage the equipment and you agree to reimburse us for any loss or damage that is caused by your intentional or negligent acts or by the intentional or negligent acts of your agents, employees, authorized users or representatives. You will allow us to remove the equipment from your premises or you will promptly return the equipment to us upon termination of the Services for which the equipment was used.

(b) Building Access. You shall obtain all necessary approvals, applicable permits and/or use fees to be attained, if any, for full access by us prior to installation of Service and while Service is provided.

(c) Responsibility for Message Content. You are solely responsible for all content that you make available on or through our Services. You guarantee that all such content will not infringe on, or contain any content that infringes on, or otherwise violates any copyright, patent or any other right held by a third-party and that all such content will not violate any applicable law, rule, regulation or industry standard.

(d) Use of Services. You will not use the Services for any illegal, unlawful, abusive or fraudulent purpose and will use the Services in such a manner as to prevent damage to our network. Your proper use of the Services includes conforming to all Acceptable Use Policies ("AUP") that are available on request and are displayed at our web site at [www.insidetelepacific.com](http://www.insidetelepacific.com). The AUP may be amended from time to time. If we materially change the AUP, you shall be provided the same right to notification and cancellation provided in Section 1(b) of this Agreement.

(e) Third-Party Obligations. You are responsible to pay any third-party vendor charges. Also, you are responsible to arrange for disconnection and payment of charges related to the disconnection of any related services with your current carrier(s). Disconnection of such services may not be delegated to us.

(f) Network Security. You acknowledge that it is your responsibility to take whatever actions you deem necessary to make your computer and voice network and circuits adequately secure from unauthorized access. You further acknowledge that we only provide telecommunications services and certain equipment to you and that we are not responsible for the security of your network and circuits from third parties, or for any damages that may result from any unauthorized access to your network. Read and follow the Fraud Guidelines provided at [www.insidetelepacific.com](http://www.insidetelepacific.com). Failure to follow the steps provided may result in a greater likelihood that your network will be exposed to fraud. Also, we urge you to seek independent advice with respect to products, equipment (including configurations), and services available to make your computer network and circuits more secure from third parties.

YOU FURTHER ACKNOWLEDGE THAT NONE OF OUR EMPLOYEES, AGENTS, REPRESENTATIVES OR SUBCONTRACTORS HAS MADE, AND THEY DO NOT HAVE THE AUTHORITY TO MAKE, ANY REPRESENTATIONS CONCERNING THE SECURITY OF YOUR NETWORK OR THE SERVICES WE PROVIDE THAT ARE INCONSISTENT WITH THE STATEMENTS

CONTAINED IN THIS SECTION 3(f).

#### **4. Automatic Renewals; Terminations; Rights and Remedies**

(a) This Agreement and any orders for Services submitted under it shall remain in effect until terminated as stated in this Section 4. After the Initial Term, this Agreement will automatically renew for successive periods of one year each at our rates then in effect for your Services unless either party notifies the other in writing within the last sixty (60) days of the then-current Term of the intent not to allow this Agreement to renew for a successive Term. However, after providing such notice, if you continue to use Service(s), by your continued use, you are agreeing to continue to receive and pay for Service(s) under this Agreement on a month-to-month basis. However, even after termination of this Agreement for Services ordered for the original Service Location(s) or additional Service Location(s) covered by this Agreement, the Terms and Conditions of this Agreement will automatically extend to cover any remaining Terms or Service Agreements for any additional Services to additional Service Locations which have not expired. The Term of any such additional Service Agreements shall be subject to the same automatic renewal and termination notice provisions as are contained in this Agreement. If either party gives the other party the required notice of a decision not to allow the Agreement or the Term of any additional Services to additional Service Locations to renew at the expiration of a Term, actual termination of Services will not occur until the later of the end of the then-current Term or thirty (30) days after receipt of that notification. If you elect to terminate the Agreement or any orders for Services before the commencement of billing for Services, you must do so in writing, and you shall pay to TelePacific as a pre-installation cancellation charge an amount equal to: (1) the non-recurring charges applicable to the Services, even if initially waived, unless those charges have already been paid, (2) if your Services require a third party to provide some or all of the underlying services, one month recurring charge times the number of months in the Initial Term for the portion of your Services to be provided by a third party times fifty percent (50%), and (3), if this Agreement is for a Term of one year, an amount equal to three times the one month recurring charges, or, if this Agreement is for a Term of more than one year, an amount equal to six times the one month recurring charges. You agree that such a termination charge is a reasonable amount because, among other reasons, it would be difficult or impossible to calculate the exact amount of damages suffered by us if you terminate this Agreement or any orders for Services.

(b) Either party may terminate this Agreement upon 30 days notice if the other party materially breaches the terms and conditions of this Agreement and the other party fails to cure the default within the 30-day period, including, but not limited to, your failure to pay our invoices for the Services by the Pay By Date. If you terminate this Agreement after our material breach, then you will be responsible only for charges for the period before the date of termination. If, however, we terminate this Agreement as a result of your material breach, or you terminate this Agreement or any Services provided to you for any reason other than our material breach, you shall pay to us a termination charge as follows:

(i) If Service Term is equal to or less than thirty-six (36) months:

(A) If the effective date of the termination occurs before the last year of the Initial or Renewal Term, we will determine the termination charge (also referred to herein as "ETF") as though you had elected an Initial Term ending within the Term year in which you terminate ("Revised Alternate Term"). For example, if you terminate in the 13th month of a three year Term, the Revised Alternate Term would be two years. We will also determine the monthly recurring charge ("MRC") that would have applied if you had chosen the Revised Alternate Term when you first selected a Term ("Default MRC"). You will then pay us a termination charge equal to: (1) the non-recurring charges for the terminated Services, even if those charges had been initially waived (only applies during Initial Term); (2) the difference between the monthly recurring charges you actually paid for the terminated Services through the effective date of termination and the Default MRCs that would have applied under a Revised Alternate Term; and (3) fifty percent (50%) of the Default MRCs for the period starting with the effective date of termination and ending on the expiration of the Revised Alternate Term. If your Services require a third party to provide some or all of the underlying services, in addition to the termination charge calculation stated above, you shall pay fifty percent (50%) of the MRCs for the portion of your Service provided by a third party for the remainder of months in the Initial Term for those Services.

(B) If the effective date of the termination occurs during the last year of the Initial or Renewal Term, you will pay us a termination charge equal to: (1) The non-recurring charges for the terminated Services, even if those charges had been initially waived (only applies during Initial Term); and (2) 50% of the monthly recurring charges for the period starting with the effective date of termination and ending on the expiration of the Initial or Renewal Term.

(ii) If Service Term is greater than thirty-six (36) months, the ETF will be calculated as specified in section 4, paragraph (b) subparagraph (i) above for a termination within the first thirty-six (36) months. Thereafter, for terminations after the thirty-sixth (36<sup>th</sup>) month, the ETF will be twenty-five percent (25%) of the remaining months of MRCs.

If you terminate this Agreement or any Services provided to you for any reason other than our material breach, you shall provide us with written notice to [www.retention@telepacific.com](mailto:www.retention@telepacific.com) thirty (30) days in advance, and the effective date of the termination will be the end of that thirty (30) day notice period for purposes of determining the remaining time over which the termination charge will be calculated. If you do not give us that notice, then the effective date of termination shall be the date we terminate this Agreement. For partial months, remaining monthly recurring charges will be determined on a prorated basis.

(c) If you request that we move your Services from your current Service Location to a different Service Location, you may incur a non-recurring charge ("Move Charge"). The Move Charge may include (i) a termination charge which, as a result of your termination, we become obligated to pay to a third party provider of the underlying facilities, and (ii) installation charge at the new Service Location. Also, a new Term may apply to any Services moved to a new Service Location.

All termination charges are due and payable immediately on the effective date of termination (including the 50% of remaining monthly recurring charges), and are in addition to any monthly recurring charges, usage charges and other charges due as of effective date of termination.

You agree that each of the above termination charges is a reasonable amount to compensate us for lost MRCs and usage charges following termination. You agree because, among other reasons, it would be difficult or impossible to calculate the exact amount of such damages suffered by us if you terminate this Agreement or any orders for Services.

(d) In addition to any other recoveries we are entitled to, we shall be entitled to recover from you for undisputed payment delinquencies all of the costs we incur (including court costs and reasonable attorneys fees) to collect any delinquent charges owed by you along with all other damages we incur as a result of your breach or other termination of this Agreement, including without limitation termination charges, past due recurring and usage charges, any damage to our equipment, any promotional credits provided to you and any amounts we have to pay to third parties because of violations by you of our AUP.

(e) Sections 4 and 5 of this Agreement, inclusive of sub-sections, shall survive any termination or expiration of this Agreement.

#### **5. Warranty Disclaimer, Limitation of Liability and Indemnity**

(a) **WARRANTY DISCLAIMER.** WITHOUT LIMITING ANY EXPRESS FINANCIAL OR LIABILITY PROVISIONS PROVIDED FOR IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST BUSINESS, REVENUE, PROFITS, OR GOODWILL) ARISING IN CONNECTION WITH THIS AGREEMENT OR THE PROVISION OF SERVICES UNDER THIS AGREEMENT (INCLUDING ANY SERVICE IMPLEMENTATION DELAYS/FAILURES), UNDER ANY THEORY INCLUDING WITHOUT LIMITATION TORT, CONTRACT, WARRANTY, STATUTE, STRICT LIABILITY OR NEGLIGENCE, EVEN IF THE PARTY HAS BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. WE MAKE NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY SERVICE PROVIDED. WE SPECIFICALLY DISCLAIM ANY AND ALL IMPLIED WARRANTIES, INCLUDING WITHOUT

LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR TITLE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

(b) Credit Allowances for Interruption of Service. If an interruption or failure of Service is caused solely by us and not by you or any third party or other causes beyond our reasonable control, you may be entitled to a credit allowance not to exceed an amount equivalent to the proportionate charge to you for the affected Service for the time period from the time of your report to us of the Service interruption to the time Service is restored, not to exceed in any month, the total monthly recurring charge owed by you for the affected Service in that month. The specific service levels, related credits and steps you must take to apply for credits are available on our website at <http://insidetelepacific.com/legal/legal-sla.asp>. We shall not be liable for any act or omission of any other entity furnishing you with facilities or equipment used with the Services, nor shall we be liable for any damages or losses due in whole or in part to your fault or negligence or due in whole or in part to the failure of equipment or facilities that you provide.

(c) LIMITATION OF LIABILITY. NOTWITHSTANDING THE PROVISIONS OF SUB-SECTION (a) OF THIS SECTION 5, OUR TOTAL LIABILITY UNDER THIS AGREEMENT SHALL IN NO EVENT EXCEED THE LESSER OF (1) YOUR PROVEN DIRECT DAMAGES, (2) THE AMOUNTS YOU PAID TO US FOR THE SERVICES DURING THE PERIOD IN WHICH ANY SERVICE-RELATED PROBLEMS WERE EXPERIENCED, OR (3) THE CREDITS AVAILABLE TO YOU UNDER OUR TARIFFED LIMITATION OF LIABILITY. THE FOREGOING LIMITATIONS APPLY TO ALL CAUSES OF ACTION AND CLAIMS, INCLUDING WITHOUT LIMITATION BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION AND OTHER TORTS.

(d) Indemnification. You will defend, indemnify and hold us harmless (including our officers, directors, employees, agents, and contractors) from any claims, liabilities, losses, damages and expenses (including reasonable attorneys fees and costs) arising out of or relating to your use of the Services. This indemnity will not be available if the damage or loss is due to our willful or reckless acts or omissions. Subject to the limitation of liability set forth in sub-section (c) of this Section, we will defend, indemnify and hold you harmless (including your officers, directors, employees, agents, licensees or contractors) from any claims, liabilities, losses, damages and expenses (including reasonable attorneys fees and court costs), arising out of or relating to our delivery of the Services to you. This indemnity will not be available if the damage or loss is due to your willful or reckless acts or omissions.

## **6. Miscellaneous Provisions**

(a) Assignment and Succession. You may not assign or transfer this Agreement without our prior written consent, which shall not be unreasonably withheld. Any unauthorized assignment or transfer shall be null and void. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, executors, administrators, legal representatives, successor and authorized assigns.

(b) Governing Law. This Agreement shall be construed pursuant to the laws of the state where the services are provided without regard to the conflicts of law provisions thereof.

(c) Force Majeure. We shall not be liable for any failure of performance of the Services due to causes beyond our control, including, but not limited to, fire, flood, electric power interruptions, national emergencies, civil disorder, acts of terrorists, riots, strikes, lockouts, work stoppages, Acts of God, or any law, regulation, directive, or order of the United States government, or any other governmental agency, including state and local governments having jurisdiction over us or the Services provided hereunder.

(d) Arbitration. If you and we cannot resolve between ourselves any dispute arising under this Agreement, you and we shall promptly submit the dispute to binding arbitration at the office of the American Arbitration Association ("AAA") located in the City or County of the state where the services are provided, or, if there is no AAA office at that location, then at the AAA office closest to where the services are provided ("Arbitration Site"). The arbitration will be held in accordance with the commercial arbitration rules of the AAA. Either party may initiate arbitration by providing written demand for arbitration (with a

copy to the other party), a copy of this Agreement and the administrative fee required by the AAA rules to the AAA office serving the Arbitration Site. The remaining cost of the arbitration shall be shared equally by the parties unless the arbitration award provides otherwise. Each party shall bear the cost of preparing and presenting its case in an arbitration, unless the arbitration award provides otherwise. You and we agree to undertake all reasonable steps to expedite the arbitration process. One arbitrator will be appointed in accordance with the AAA rules within 30 calendar days of the submission of the demand for arbitration. The arbitrator will designate the time and place for the Arbitration within 30 days of appointment. The parties agree that the arbitrator's authority to grant relief shall be subject to the provisions of this Agreement, our applicable tariffs, if any, and any other applicable law. The arbitrator shall not be entitled to award, nor shall either party be entitled to receive, punitive, incidental, exemplary, consequential, reliance or special damages, including damages for lost profits. The arbitrator's decision shall follow the plain meaning of this Agreement and shall be final, binding and enforceable in a court of competent jurisdiction. The parties waive any right to trial by jury and to participate in or initiate class actions; if the parties cannot waive these rights, this entire section is null and void.

(e) Entire Agreement and Modifications. This Agreement and all other documents specifically referred to in this Agreement constitute the entire and final agreement and understanding between you and us with respect to the subject matter of this Agreement and supersede all prior agreements relating to such subject matter, which are of no further force or effect. Any and all exhibits referred to in this Agreement are integral parts of this Agreement and are made a part of this Agreement. This Agreement may only be modified or supplemented by an instrument in writing executed by both your and our duly authorized representatives or by a written notice of change pursuant to section 1(b) hereof.

(f) Severability. If any provision of this Agreement is held to be invalid or unenforceable by a court or administrative agency with jurisdiction over the Services, such provision shall be deemed amended to the minimum extent necessary to render it enforceable.

(g) Headings. The headings used in this Agreement are for convenience only and do not in any way limit or otherwise affect the meaning of any of the terms.

(h) Waiver. Under no circumstances shall either party's failure to enforce any provision of this Agreement in any particular instance be construed as a waiver of that provision.

(i) Notices. All notices from you to us must be in writing and delivered by certified mail, return receipt requested or by Federal Express or other similar expedited delivery service to: U.S. TelePacific Corp., Attn. General Counsel, 515 S. Flower Street, 47<sup>th</sup> Floor, Los Angeles, CA 90071-2201. If you are notifying us that you do not wish to renew Services, your written notice may be by a letter delivered in that manner or by an email to: [retention@telepacific.com](mailto:retention@telepacific.com).

(j.) Limitation on Actions. Any legal action arising in connection with this Agreement must begin within two (2) years after the cause of action arises.

## **7. Service Guarantee**

Notwithstanding anything to the contrary contained in this Agreement, you may terminate this Agreement without any further obligation if the Services we provide are not substantially performing up to industry standards during the first 90 days the Services are available for your use. If you elect to terminate the Agreement pursuant to this guarantee, we will reimburse you for all reasonable costs you incurred to re-establish service with your previous service provider not to exceed the amount that you paid to us for installation of the Services. This Service Guarantee only applies if: (a) the cause of the Service deficiency was within our reasonable control; (b) you ordered at least the amount of Services that we recommended to meet your traffic volumes; (c) you give us written notice of the deficiency within the first ninety (90) days after we notified you the Services are available for your use, and (d) we fail to correct the Service deficiency within fifteen (15) days after receiving written notice from you of the deficiency.



## **TelePacific Communications - Voice, Data and Integrated Service Level Agreement (SLA)**

### **1. General**

TelePacific Communications is committed to providing its customers with the highest quality voice, integrated and data services. As a result, TelePacific will guarantee network service levels, for the following categories, if applicable to services purchased: Network Availability Guarantee, Mean Time to Repair (MTTR) Guarantee, Latency Guarantee, Packet Loss Guarantee and Jitter Guarantee. These guarantees apply to those services that utilize TelePacific's network of T1, DS3 and Ethernet based services for its voice, integrated and/or data including those services described in Section 3 below. For integrated services the SLA will only apply to the service affected by the impairment.

TelePacific service is interrupted when it becomes unusable to the Customer because of failure of the TelePacific network or facility component used to provide service under this agreement. An interruption period begins when an inoperative service is reported to TelePacific and the service is released for testing and repair and ends when the service is operative.

### **2. Service Credit Claim Procedure and Limitations**

The customer must initiate the service credit claim within 45 business days after the end of the month during or for which the event occurred. TelePacific will take all measures it deems appropriate to investigate reported failures. In no event shall the combined credits for the guarantees listed above, separately or combined with any other service credit claims against TelePacific, exceed in any month the total monthly recurring charge owed by the customer for the service in that month. No more than one service credit allowance shall be provided to a customer for an outage or interruption in service from a single or the same occurrence.

No credit allowance for service interruptions will be made under the following circumstances:

- Interruptions caused by the negligence of the customer.
- Interruptions of a service due to the failure of equipment or systems provided by the customer or others.
- Interruptions of a service during any period in which TelePacific does not have access to the premises where the service is located.
- Interruptions of a service when the customer has released the service to TelePacific for maintenance purposes, to make rearrangements or for the implementation of an order for a change in the service during the time period that was negotiated with the customer prior to the release of that service.
- Interruptions of service that are planned service interruptions. A planned service interruption is a service interruption that is required to facilitate network maintenance or upgrades. TelePacific shall use reasonable efforts to notify the customer one week in advance when a planned service interruption is scheduled to take place. In the event an emergency should arise, TelePacific will attempt to notify the customer of a planned service interruption as far in advance as possible.
- Interruptions of service when the customer elects not to release the service for testing and/or repair and continues to use it on an impaired basis.
- Interruptions caused by or related to labor difficulties, governmental orders, civil commotions, acts of terrorism, criminal actions taken against TelePacific, acts of God and other circumstances beyond TelePacific's reasonable control.
- Interruptions of service during periods of temporary discontinuance of service as specified in TelePacific's applicable tariffs.

### 3. Guarantees for Voice, Integrated and Data T1, DS3 and Ethernet Services

SLA	Voice	Integrated	On net Data	OneNet Extended Reach
<b>Services</b>	Business Lines, PRI, SuperTrunk	SmartVoice, OnePac, Flex, Mpower Office	Internet T1, Fractional Internet T1, Bonded T1, DS3, Ethernet OneNet IP VPN Dedicated Internet Access, and Mpower Connect	Extended Reach – lower 48 states. International SLAs vary.
<b>Demarc</b>	TPAC network or facility component used to provide service			
<b>Network Availability</b>	<b>99.999%</b> <b>TelePacific Core Network</b>			
Time Interval	Calendar Month			
Remedy	<4 hours \$0 >=4 hours 1/30 <sup>th</sup> MRC for each hour exceeding 4 hours			
<b>MTTR</b>	<b>4 hours</b> <b>Local Access Circuit</b>			
Remedy	<4 hours \$0 >=4 hours 1/30 <sup>th</sup> MRC for each hour exceeding 4 hours			
<b>Latency</b>		<b>60 ms</b>	<b>60 ms</b>	<b>120 ms</b>
Time Interval		Month	Calendar Month	Calendar Month
Remedy		1/30 <sup>th</sup> MRC per 1ms above 60ms average	1/30 <sup>th</sup> MRC per 1ms above 60ms average	1/30 <sup>th</sup> MRC per 1ms above 120ms average
<b>Packet Loss</b>		<b>&lt;1%</b>	<b>&lt;=1%</b>	<b>&lt;=1%</b>
Time Interval		Month	Calendar Month	Calendar Month
Remedy		1/30 <sup>th</sup> MRC per 1ms above 1%	1/30 <sup>th</sup> MRC per 1% above 1%	1/30 <sup>th</sup> MRC per 1% above 1%
<b>Jitter</b>			①Net services only COS 1 <=5ms COS 2 <=7ms	①Net services only COS 1 <=7ms COS 2 <=14ms
Time Interval			Calendar Month	Calendar Month
Remedy			1/30 <sup>th</sup> MRC for each 2ms above SLA for one Class of Service	1/30 <sup>th</sup> MRC for each 2ms above SLA for one Class of Service



# STATE OF UTAH - STATE COOPERATIVE CONTRACT

CONTRACT NUMBER AR627

1. **CONTRACTING PARTIES:** This State Cooperative Contract is between the **Division of Purchasing and General Services (State)**, 3150 State Office Building, PO Box 141061, Salt Lake City, UT 84114-1061, an agency of the State of Utah, and the following CONTRACTOR:

ShoreTel Inc.

Name		
<u>960 Stewart Dr</u>		
Address		
<u>Sunnyvale</u>	<u>CA</u>	<u>94085</u>
City	State	Zip

## LEGAL STATUS OF CONTRACTOR

- ☐ Sole Proprietor  
☐ Non-Profit Corporation  
☒ For-Profit Corporation  
☐ Partnership  
☐ Government Agency

Contact Person Holly Davis Phone #408-900-1195 Fax # 408-900-1195 Email hdavis@shoretel.com  
Federal Tax ID# 770443568 Vendor #VC0000182077 Commodity Code #20458, 20464, 20621, 20623, 20659,  
83833, 83800, 88332, 92000

2. **GENERAL PURPOSE OF CONTRACT:** The general purpose of this contract is to provide:

Data communication equipment and services. A detailed list of awarded categories and subcategories are included in Attachment B - Scope of Work.

ShoreTel Inc. is authorized to provide equipment and services in the following categories:  
5.3.0 Unified Communications.

3. **CONTRACT PERIOD:** Effective date: June 1, 2014 Termination date: May 31, 2019 unless terminated early or extended in accordance with the terms and conditions of this contract. Renewal options (if any): N/A

4. **PRICING AS PER THE ATTACHMENT C**

PAYMENT TERMS: Net 30

DAYS REQUIRED FOR DELIVERY: 30 days ARO

MINIMUM ORDER: N/A

FREIGHT TERMS: FOB Destination, Freight Prepaid

5. **ATTACHMENT A:** WSCA-NASPO Standard Contract Terms and Conditions

**ATTACHMENT B:** Scope of Work

**ATTACHMENT C:** Pricing

**ATTACHMENT D:** Vendor's Response to Solicitation JP14001. The parties hereby acknowledge and agree that any exceptions stated in attachment "D" – Vendor's Proposal Response have been removed and/or resolved between the parties. Any exception in attachment "D" are explicitly NOT a part of this contract.

Any conflicts between Attachment A and other Attachments will be resolved in favor of Attachment A. State specific Terms and Conditions will be found in the executed Participating Addendums. State Terms and Conditions in an executed Participating Addendum will take priority in the event of conflict between those terms and conditions and this Cooperative Contract.

6. **DOCUMENTS INCORPORATED INTO THIS CONTRACT BY REFERENCE BUT NOT ATTACHED:**

a. All other governmental laws, regulations, or actions applicable to the goods and/or services authorized by this contract.




State of Utah Contract Number AR627 Page 2 of 2

- b. Utah State Procurement Code, Procurement Rules, CONTRACTOR'S response to Bid #JP14001 and JP14001-1 dated August 30, 2013 and December 2, 2013, and Bid #JP14001 and JP14001-1 dated August 30, 2013 and December 2, 2013.

IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

CONTRACTOR

STATE OF UTAH

	
Contractor's Signature	Director, Div. of Purchasing & General Svs.
<u>3/12/14</u>	<u>3/17/14</u>
Date	Date
	
Type or Print Name and Title	

## ATTACHMENT A – WSCA-NASPO Terms and Conditions



### WSCA-NASPO Master Agreement Terms and Conditions

#### **1. AGREEMENT ORDER OF PRECEDENCE:**

The Master Agreement shall consist of the following documents:

1. A Participating Entity's Participating Addendum ("PA");
2. WSCA-NASPO Master Agreement Terms and Conditions;
3. The Statement of Work;
4. The Solicitation; and
5. Contractor's response to the Solicitation.

These documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. Contractor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to this Master Agreement as an Exhibit or Attachment. No other terms and conditions shall apply, including terms and conditions listed in the Contractor's response to the Solicitation, or terms listed or referenced on the Contractor's website, in the Contractor quotation/sales order or in similar documents subsequently provided by the Contractor.

**2. AMENDMENTS** The terms of this Master Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the WSCA-NASPO Contract Administrator.

**3. ASSIGNMENT/SUBCONTRACT** Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of the WSCA-NASPO Contract Administrator.

**4. CANCELLATION** Unless otherwise stated in the special terms and conditions, any Master Agreement may be canceled by either party upon 60 days notice, in writing, prior to the effective date of the cancellation. Further, any Participating State may cancel its

participation upon 30 days written notice, unless otherwise limited or stated in the special terms and conditions of this solicitation. Cancellation may be in whole or in part. Any cancellation under this provision shall not effect the rights and obligations attending orders outstanding at the time of cancellation, including any right of and Purchasing Entity to indemnification by the Contractor, rights of payment for goods/services delivered and accepted, and rights attending any warranty or default in performance in association with any order. Cancellation of the Master Agreement due to Contractor default may be immediate.

## **5. CONFIDENTIALITY, NON-DISCLOSURE AND INJUNCTIVE RELIEF**

**5.1 Confidentiality.** Contractor acknowledges that it and its employees or agents may, in the course of providing the Product under this Master Agreement, be exposed to or acquire information that is confidential to Participating Entity or Participating Entity's clients. Any and all information of any form that is marked as confidential or would by its nature be deemed confidential obtained by Contractor or its employees or agents in the performance of this Master Agreement, including, but not necessarily limited to (a) any Participating Entity records, (b) personnel records, and (c) information concerning individuals, is confidential information of Participating Entity ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated in the same manner as the Confidential Information. Confidential Information does not include information that (a) is or becomes (other than by disclosure by Contractor) publicly known; (b) is furnished by Participating Entity to others without restrictions similar to those imposed by this Master Agreement; (c) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Master Agreement; (d) is obtained from a source other than Participating Entity without the obligation of confidentiality, (e) is disclosed with the written consent of Participating Entity or; (f) is independently developed by employees, agents or subcontractors of Contractor who can be shown to have had no access to the Confidential Information.

**5.2 Non-Disclosure.** Contractor shall hold Confidential Information in confidence, using at least the industry standard of confidentiality, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the performance of this Master Agreement to Participating Entity hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use commercially reasonable efforts to assist Participating Entity in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Contractor shall advise Participating Entity immediately if Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Master Agreement and Contractor shall at its expense cooperate with Participating Entity in seeking injunctive or other equitable relief in the name of Participating Entity or Contractor against any such person. Except as directed by Participating Entity, Contractor will not at any time

during or after the term of this Master Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Master Agreement, and that upon termination of this Master Agreement or at Participating Entity's request, Contractor shall turn over to Participating Entity all documents, papers, and other matter in Contractor's possession that embody Confidential Information. Notwithstanding the foregoing, Contractor may keep one copy of such Confidential Information necessary for quality assurance, audits and evidence of the performance of this Master Agreement.

**5.3 Injunctive Relief.** Contractor acknowledges that breach of this Section, including disclosure of any Confidential Information, will cause irreparable injury to Participating Entity that is inadequately compensable in damages. Accordingly, Participating Entity may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Participating Entity and are reasonable in scope and content.

**6. DEBARMENT** The contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If the contractor cannot certify this statement, attach a written explanation for review by WSCA-NASPO.

## **7. DEFAULTS & REMEDIES**

a. The occurrence of any of the following events shall be an event of default under this Master Agreement:

- i. Nonperformance of contractual requirements; or
- ii. A material breach of any term or condition of this Master Agreement; or
- iii. Any representation or warranty by Contractor in response to the solicitation or in this Master Agreement proves to be untrue or materially misleading; or
- iv. Institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) calendar days after the institution or occurrence thereof; or
- v. Any default specified in another section of this Master Agreement.

b. Upon the occurrence of an event of default, Lead State shall issue a written notice of default, identifying the nature of the default, and providing a period of 15 calendar days in which Contractor shall have an opportunity to cure the default. The Lead State shall not be required to provide advance written notice or a cure period and may immediately terminate this Master Agreement in whole or in part if the Lead State, in its sole discretion, determines that it is reasonably necessary to preserve public safety or prevent immediate public crisis. Time allowed for cure shall not diminish or eliminate Contractor's liability for damages, including liquidated damages to the extent provided for under this Master Agreement.

c. If Contractor is afforded an opportunity to cure and fails to cure the default within the period specified in the written notice of default, Contractor shall be in breach of its

obligations under this Master Agreement and Lead State shall have the right to exercise any or all of the following remedies:

- i. Exercise any remedy provided by law; and
- ii. Terminate this Master Agreement and any related Contracts or portions thereof; and
- iii. Impose liquidated damages as provided in this Master Agreement; and
- iv. Suspend Contractor from receiving future bid solicitations; and
- v. Suspend Contractor's performance; and
- vi. Withhold payment until the default is remedied.

d. In the event of a default under a Participating Addendum, a Participating Entity shall provide a written notice of default as described in this section and have all of the rights and remedies under this paragraph regarding its participation in the Master Agreement, in addition to those set forth in its Participating Addendum.

**8. DELIVERY** Unless otherwise indicated in the Master Agreement, the prices are the delivered price to any Participating State agency or political subdivision. All deliveries shall be F.O.B. destination with all transportation and handling charges paid by the contractor. Responsibility and liability for loss or damage shall remain the Contractor until final inspection and acceptance when responsibility shall pass to the Buyer except as to latent defects, fraud and Contractor's warranty obligations. The minimum shipment amount will be found in the special terms and conditions. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an order to be shipped without transportation charges that is back ordered shall be shipped without charge.

**9. FORCE MAJEURE** Neither party to this Master Agreement shall be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. WSCA-NASPO may terminate this Master Agreement after determining such delay or default will reasonably prevent successful performance of the Master Agreement.

**10. GOVERNING LAW** This procurement and the resulting agreement shall be governed by and construed in accordance with the laws of the state sponsoring and administering the procurement. The construction and effect of any Participating Addendum or order against the Master Agreement(s) shall be governed by and construed in accordance with the laws of the Participating Entity's State. Venue for any claim, dispute or action concerning an order placed against the Master Agreement(s) or the effect of an Participating Addendum shall be in the Purchasing Entity's State.

**11. INDEMNIFICATION** The Contractor shall defend, indemnify and hold harmless WSCA-NASPO, the Lead State and Participating Entities along with their officers, agencies, and employees as well as any person or entity for which they may be liable from and against claims, damages or causes of action including reasonable attorneys' fees and related costs for any death, injury, or damage to property arising from act(s), error(s), or omission(s) of the Contractor, its employees or subcontractors or volunteers, at any tier, relating to the

performance under the Master Agreement. This section is not subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement

**12. INDEMNIFICATION - INTELLECTUAL PROPERTY** The Contractor shall defend, indemnify and hold harmless WSCA-NASPO, the Lead State and Participating Entities along with their officers, agencies, and employees as well as any person or entity for which they may be liable ("Indemnified Party") from and against claims, damages or causes of action including reasonable attorneys' fees and related costs arising out of the claim that the Product or its use, infringes Intellectual Property rights ("Intellectual Property Claim"). The Contractor's obligations under this section shall not extend to any combination of the Product with any other product, system or method, unless:

(1) the Product, system or method is:

(a) provided by the Contractor or the Contractor's subsidiaries or affiliates;

(b) specified by the Contractor to work with the Product; or

(c) reasonably required, in order to use the Product in its intended manner, and the infringement could not have been avoided by substituting another reasonably available product, system or method capable of performing the same function; or

(2) it would be reasonably expected to use the Product in combination with such product, system or method.

The Indemnified Party shall notify the Contractor within a reasonable time after receiving notice of an Intellectual Property Claim. Even if the Indemnified Party fails to provide reasonable notice, the Contractor shall not be relieved from its obligations unless the Contractor can demonstrate that it was prejudiced in defending the Intellectual Property Claim resulting in increased expenses or loss to the Contractor. If the Contractor promptly and reasonably investigates and defends any Intellectual Property Claim, it shall have control over the defense and settlement of it. However, the Indemnified Party must consent in writing for any money damages or obligations for which it may be responsible. The Indemnified Party shall furnish, at the Contractor's reasonable request and expense, information and assistance necessary for such defense. If the Contractor fails to vigorously pursue the defense or settlement of the Intellectual Property Claim, the Indemnified Party may assume the defense or settlement of it and the Contractor shall be liable for all costs and expenses, including reasonable attorneys' fees and related costs, incurred by the Indemnified Party in the pursuit of the Intellectual Property Claim. This section is not subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement.

**13. INDEPENDENT CONTRACTOR** The contractor shall be an independent contractor, and as such shall have no authorization, express or implied to bind WSCA-NASPO or the respective states to any agreements, settlements, liability or understanding whatsoever, and agrees not

to perform any acts as agent for WSCA-NASPO or the states, except as expressly set forth herein.

**14. INDIVIDUAL CUSTOMER** Except to the extent modified by a Participating Addendum, each Participating Entity shall follow the terms and conditions of the Master Agreement and applicable Participating Addendum and will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement, including but not limited to, any indemnity or to recover any costs allowed in the Master Agreement and applicable Participating Addendum for their purchases. Each Participating Entity will be responsible for its own charges, fees, and liabilities. The Contractor will apply the charges and invoice each Participating Entity individually.

**15. INSURANCE** Contractor shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the Participating Entity's state and having a rating of A-, Class VII or better, in the most recently published edition of Best's Reports. Failure to buy and maintain the required insurance may result in this Master Agreement's termination or at a Participating Entity's option, result in termination of its Participating Addendum.

Coverage shall be written on an occurrence basis. The minimum acceptable limits shall be as indicated below, with no deductible for each of the following categories:

- a) Commercial General Liability covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate;
- b) Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.

Contractor shall pay premiums on all insurance policies. Such policies shall also reference this Master Agreement and shall have a condition that they not be revoked by the insurer until thirty (30) calendar days after notice of intended revocation thereof shall have been given to Participating Entity by the Contractor.

Prior to commencement of the work, Contractor shall provide to the Participating Entity a written endorsement to the Contractor's general liability insurance policy that (i) names the Participating Entity as an additional insured, (ii) provides that no material alteration, cancellation, non-renewal, or expiration of the coverage contained in such policy shall have effect unless the named Participating Entity has been given at least thirty (30) days prior written notice, and (iii) provides that the Contractor's liability insurance policy shall be primary, with any liability insurance of the Participating Entity as secondary and noncontributory.

Contractor shall furnish to Participating Entity copies of certificates of all required insurance within thirty (30) calendar days of the Participating Addendum's effective date and prior to performing any work. Copies of renewal certificates of all required insurance shall be



furnished within thirty (30) days after renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this section. Failure to provide evidence of coverage may, at State's sole option, result in this Master Agreement's termination.

Coverage and limits shall not limit Contractor's liability and obligations under this Master Agreement.

**16. LAWS AND REGULATIONS** Any and all supplies, services and equipment offered and furnished shall comply fully with all applicable Federal and State laws and regulations.

**17. LICENSE OF PRE-EXISTING INTELLECTUAL PROPERTY** Contractor grants to the Participating Entity a nonexclusive, perpetual, royalty-free, irrevocable, unlimited license to publish, translate, reproduce, modify, deliver, perform, display, and dispose of the Intellectual Property, and its derivatives, used or delivered under this Master Agreement, but not created under it ("Pre-existing Intellectual Property"). The license shall be subject to any third party rights in the Pre-existing Intellectual Property. Contractor shall obtain, at its own expense, on behalf of the Participating Entity, written consent of the owner for the licensed Pre-existing Intellectual Property.

**18. NO WAIVER OF SOVEREIGN IMMUNITY** In no event shall this Master Agreement, any Participating Addendum or any contract or any purchase order issued thereunder, or any act of a Lead State or a Participating Entity, be a waiver by the Participating Entity of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.

If a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the Participating State. This section applies to a claim brought against the Participating State only to the extent Congress has appropriately abrogated the Participating State's sovereign immunity and is not consent by the Participating State to be sued in federal court. This section is also not a waiver by the Participating State of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

**19. ORDER NUMBERS** Master Agreement order and purchase order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.

**20. PARTICIPANTS** WSCA-NASPO is the cooperative purchasing arm of the National Association of State Procurement Officials. It is a cooperative group contracting consortium for state government departments, institutions, agencies and political subdivisions (e.g.,

colleges, school districts, counties, cities, etc.,) for all 50 states, the District of Columbia and the organized US territories. Obligations under this Master Agreement are limited to those Participating States who have signed a Participating Addendum where contemplated by the solicitation. Financial obligations of Participating States are limited to the orders placed by the departments or other state agencies and institutions having available funds. Participating States incur no financial obligations on behalf of political subdivisions. Unless otherwise specified in the solicitation, the resulting award(s) will be permissive.

**21. ENTITY PARTICIPATION** Use of specific WSCA-NASPO cooperative Master Agreements by state agencies, political subdivisions and other entities (including cooperatives) authorized by individual state's statutes to use state contracts are subject to the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the respective State Chief Procurement Official.

**22. PAYMENT** Payment for completion of a contract order is normally made within 30 days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance. Payments will be remitted by mail. Payments may be made via a State or political subdivision "Purchasing Card" with no additional charge.

**23. PUBLIC INFORMATION** This Master Agreement and all related documents are subject to disclosure pursuant to the Participating Entity's public information laws.

**24. RECORDS ADMINISTRATION AND AUDIT** The contractor will maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the contractor for costs authorized by this Master Agreement. These records will be retained by the contractor for at least four years after the Master Agreement terminates, or until all audits initiated within the four years have been completed, whichever is later. The contractor agrees to allow WSCA-NASPO, State and Federal auditors, and state agency staff access to all the records of this Master Agreement and any order placed under this Master Agreement, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.

**25. REPORTS and ADMINISTRATIVE FEES** The contractor shall submit quarterly reports to the WSCA-NASPO Contract Administrator showing the quantities and dollar volume of purchases by each participating entity.

The contractor must pay a WSCA-NASPO administrative fee of one quarter of one percent (.25%) in accordance with the terms and conditions of the Master Agreement. The WSCA-NASPO administrative fee shall be submitted quarterly and is based on sales of products and services. The WSCA-NASPO administration fee is not negotiable. This fee is to be included as part of the pricing submitted with proposal.

Additionally, some States may require that an additional fee be paid directly to the State on purchases made by procuring entities within that State. For all such requests, the fee level, payment method and schedule for such reports and payments will be incorporated in a Participating Addendum that is made a part of the Master Agreement. The contractor may adjust the Master Agreement pricing accordingly for purchases made by procuring agencies within the jurisdiction of the State. All such agreements may not affect the WSCA-NASPO administrative fee or the prices paid by the procuring agencies outside the jurisdiction of the State requesting the additional fee.

**26. STANDARD OF PERFORMANCE AND ACCEPTANCE** The Standard of Performance applies to all Product(s) purchased under this Master Agreement, including any additional, replacement, or substitute Product(s) and any Product(s) which are modified by or with the written approval of Contractor after Acceptance by the Participating Entity. The Acceptance Testing period shall be thirty (30) calendar days or other time period identified in the solicitation or the Participating Addendum, starting from the day after the Product is installed and Contractor certifies that the Product is ready for Acceptance Testing. If the Product does not meet the Standard of Performance during the initial period of Acceptance Testing, Participating Entity may, at its discretion, continue Acceptance Testing on a day-to-day basis until the Standard of Performance is met. Upon rejection, the Contractor will have fifteen (15) calendar days to cure the Standard of Performance issue(s). If after the cure period, the Product still has not met the Standard of Performance Participating Entity may, at its option: (1) declare Contractor to be in breach and terminate the Order; (2) demand replacement Product from Contractor at no additional cost to Participating Entity; or, (3) continue the cure period for an additional time period agreed upon by the Participating Entity and the Contractor. Contractor shall pay all costs related to the preparation and shipping of Product returned pursuant to the section. No Product shall be accepted and no charges shall be paid until the Standard of Performance is met. The warranty period will begin upon Acceptance.

**27. SYSTEM FAILURE OR DAMAGE** In the event of system failure or damage caused by the Contractor or its Product, the Contractor agrees to use its best efforts to restore or assist in restoring the system to operational capacity.

**28. TITLE OF PRODUCT** Upon Acceptance by the Participating Entity, Contractor shall convey to Participating Entity title to the Product free and clear of all liens, encumbrances, or other security interests. Transfer of title to the Product shall include an irrevocable and perpetual license to use the Embedded Software in the Product. If Participating Entity subsequently transfers title of the Product to another entity, Participating Entity shall have the right to transfer the license to use the Embedded Software with the transfer of Product title. A subsequent transfer of this software license shall be at no additional cost or charge to either Participating Entity or Participating Entity's transferee.

**29. WAIVER OF BREACH** Failure of Lead State or Participating Entity to declare a default or enforce any rights and remedies shall not operate as a waiver under this Master Agreement or Participating Addendum. Any waiver by the Lead State or Participating Entity must be in writing. Waiver by the Lead State or Participating Entity of any default, right or remedy under this Master Agreement or Participating Addendum, or breach of any terms or requirements shall not be construed or operate as a waiver of any subsequent default or breach of such term or requirement, or of any other term or requirement under this Master Agreement or Participating Addendum.

**30. WARRANTY** The Contractor warrants for a period of one year from the date of Acceptance that: (a) the Product performs according to all specific claims that the Contractor made in its response to the solicitation, (b) the Product is suitable for the ordinary purposes for which such Product is used, (c) the Product is suitable for any special purposes identified in the solicitation or for which the Participating Entity has relied on the Contractor's skill or judgment, (d) the Product is designed and manufactured in a commercially reasonable manner, and (e) the Product is free of defects. Upon breach of the warranty, the Contractor will repair or replace (at no charge to the Participating Entity) the Product whose nonconformance is discovered and made known to the Contractor. If the repaired and/or replaced Product proves to be inadequate, or fails of its essential purpose, the Contractor will refund the full amount of any payments that have been made. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation, actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.

See Attachment D - Vendor RFP Response for warranty details.

**31. ASSIGNMENT OF ANTITRUST RIGHTS** Contractor irrevocably assigns to a Participating Entity any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of state or federal antitrust laws (15 U.S.C. § 1-15 or a Participating Entity's state antitrust provisions), as now in effect and as may be amended from time to time, in connection with any goods or services provided to the Contractor for the purpose of carrying out the Contractor's obligations under this Master Agreement or Participating Addendum, including, at a Participating Entity's option, the right to control any such litigation on such claim for relief or cause of action.

Contractor shall require any subcontractors hired to perform any of Contractor's obligations, under this Master Agreement or Participating Addendum, to irrevocably assign to a Participating Entity, as third party beneficiary, any right, title or interest that has accrued or which may accrue in the future by reason of any violation of state or federal antitrust laws (15 U.S.C. § 1-15 or a Participating Entity's state antitrust provisions), as now in effect and as may be amended from time to time, in connection with any goods or services provided to the subcontractor for the purpose of carrying out the subcontractor's obligations to the Contractor in pursuance of this Master Agreement or Participating Addendum, including, at a

Participating Entity's option, the right to control any such litigation on such claim for relief or cause of action.

**32. WSCA-NASPO eMARKET CENTER** Awarded responders are required to participate in the WSCA-NASPO eMarket Center and, working through WSCA-NASPO's contractor (SciQuest), connect with the eMarket Center. The ideal situation would be to use either a hosted (by SciQuest) or Punchout Level 2 catalog configurations, but actual requirements will be determined by the Lead State Contract Administrator, WSCA-NASPO, WSCA-NASPO's contractor (SciQuest) and the awarded contractor, after award. Participation does not require an awarded responder to have any special level of technology or technological understanding.

### **Definitions**

**Acceptance** - means a written notice from a purchasing entity to contractor advising Contractor that the Product has passed its Acceptance Testing. Acceptance of a product for which acceptance testing is not required shall occur following the completion of delivery, installation, if required, and a reasonable time for inspection of the product, unless the Purchasing Entity provides a written notice of rejection to contractor.

**Acceptance Testing** - means the process for ascertaining that the Product meets the standards set forth in the section titled Standard of Performance and Acceptance, prior to Acceptance by the Purchasing Entity.

**Contractor** - means the person or entity delivering Products or performing services under the terms and conditions set forth in this Master Agreement.

**Intellectual Property** - means any and all patents, copyrights, service marks, trademarks, trade secrets, trade names, patentable inventions, or other similar proprietary rights, in tangible or intangible form, and all rights, title, and interest therein.

**Lead State** - means the State conducting this cooperative solicitation and centrally administering any resulting Master Agreement with the permission of the Signatory States.

**Master Agreement** - means the underlying agreement executed by and between the Lead State, as WSCA-NASPO contract administrator, acting on behalf of WSCA-NASPO, and the Contractor, as now or hereafter amended.

**Order** - means any purchase order, sales order, or other document used by a Participating Entity to order the Products.

**Participating Addendum** - means a bilateral agreement executed by a Contractor and a Participating Entity incorporating this Master Agreement and any other additional Participating Entity specific language or other requirements ,e.g. ordering procedures specific to the Participating Entity, other terms and conditions.

**Participating Entity** - means a state, or other legal entity, properly authorized by a state to enter into the Master Agreement or Participating Addendum or who is authorized to order under the Master Agreement or Participating Addendum.

**Product** - Any equipment, software (including embedded software), documentation, or deliverable supplied or created by the Contractor pursuant to this Master Agreement.

**WSCA-NASPO** -is a cooperative group contracting consortium for state procurement officials, representing departments, institutions, agencies, and political subdivisions (i.e., colleges, school districts, counties, cities, etc.) for all states and the District of Columbia. WSCA-NASPO is a cooperative purchasing arm of the National Association of State Procurement Officials (NASPO).

#### **Additional Definitions and Alternative Terms for Consideration**

Below are additional definitions and alternative terms for consideration by the sourcing teams depending upon the nature of the solicitation and negotiations between the Contractor and Vendor.

**Embedded Software** - means one or more software applications which permanently reside on a computing device.

**Machine Code** - means microcode, basic input/output system code, utility programs, device drivers, diagnostics, and another code delivered with a computing device for the purpose of enabling the function of the computing device, as stated in its published specifications.

(revised March 2013)

## **ATTACHMENT A – WSCA-NASPO Terms and Conditions**



### **WSCA-NASPO Master Agreement Terms and Conditions**

#### **1. AGREEMENT ORDER OF PRECEDENCE:**

The Master Agreement shall consist of the following documents:

1. A Participating Entity's Participating Addendum ("PA");
2. WSCA-NASPO Master Agreement Terms and Conditions;
3. The Statement of Work;
4. The Solicitation; and
5. Contractor's response to the Solicitation.

These documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. Contractor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to this Master Agreement as an Exhibit or Attachment. No other terms and conditions shall apply, including terms and conditions listed in the Contractor's response to the Solicitation, or terms listed or referenced on the Contractor's website, in the Contractor quotation/sales order or in similar documents subsequently provided by the Contractor.

**2. AMENDMENTS** The terms of this Master Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the WSCA-NASPO Contract Administrator.

**3. ASSIGNMENT/SUBCONTRACT** Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of the WSCA-NASPO Contract Administrator.

**4. CANCELLATION** Unless otherwise stated in the special terms and conditions, any Master Agreement may be canceled by either party upon 60 days notice, in writing, prior to the effective date of the cancellation. Further, any Participating State may cancel its

participation upon 30 days written notice, unless otherwise limited or stated in the special terms and conditions of this solicitation. Cancellation may be in whole or in part. Any cancellation under this provision shall not effect the rights and obligations attending orders outstanding at the time of cancellation, including any right of and Purchasing Entity to indemnification by the Contractor, rights of payment for goods/services delivered and accepted, and rights attending any warranty or default in performance in association with any order. Cancellation of the Master Agreement due to Contractor default may be immediate.

## **5. CONFIDENTIALITY, NON-DISCLOSURE AND INJUNCTIVE RELIEF**

**5.1 Confidentiality.** Contractor acknowledges that it and its employees or agents may, in the course of providing the Product under this Master Agreement, be exposed to or acquire information that is confidential to Participating Entity or Participating Entity's clients. Any and all information of any form that is marked as confidential or would by its nature be deemed confidential obtained by Contractor or its employees or agents in the performance of this Master Agreement, including, but not necessarily limited to (a) any Participating Entity records, (b) personnel records, and (c) information concerning individuals, is confidential information of Participating Entity ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated in the same manner as the Confidential Information. Confidential Information does not include information that (a) is or becomes (other than by disclosure by Contractor) publicly known; (b) is furnished by Participating Entity to others without restrictions similar to those imposed by this Master Agreement; (c) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Master Agreement; (d) is obtained from a source other than Participating Entity without the obligation of confidentiality, (e) is disclosed with the written consent of Participating Entity or; (f) is independently developed by employees, agents or subcontractors of Contractor who can be shown to have had no access to the Confidential Information.

**5.2 Non-Disclosure.** Contractor shall hold Confidential Information in confidence, using at least the industry standard of confidentiality, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the performance of this Master Agreement to Participating Entity hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use commercially reasonable efforts to assist Participating Entity in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Contractor shall advise Participating Entity immediately if Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Master Agreement and Contractor shall at its expense cooperate with Participating Entity in seeking injunctive or other equitable relief in the name of Participating Entity or Contractor against any such person. Except as directed by Participating Entity, Contractor will not at any time



during or after the term of this Master Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Master Agreement, and that upon termination of this Master Agreement or at Participating Entity's request, Contractor shall turn over to Participating Entity all documents, papers, and other matter in Contractor's possession that embody Confidential Information. Notwithstanding the foregoing, Contractor may keep one copy of such Confidential Information necessary for quality assurance, audits and evidence of the performance of this Master Agreement.

**5.3 Injunctive Relief.** Contractor acknowledges that breach of this Section, including disclosure of any Confidential Information, will cause irreparable injury to Participating Entity that is inadequately compensable in damages. Accordingly, Participating Entity may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Participating Entity and are reasonable in scope and content.

**6. DEBARMENT** The contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If the contractor cannot certify this statement, attach a written explanation for review by WSCA-NASPO.

## **7. DEFAULTS & REMEDIES**

a. The occurrence of any of the following events shall be an event of default under this Master Agreement:

- i. Nonperformance of contractual requirements; or
- ii. A material breach of any term or condition of this Master Agreement; or
- iii. Any representation or warranty by Contractor in response to the solicitation or in this Master Agreement proves to be untrue or materially misleading; or
- iv. Institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) calendar days after the institution or occurrence thereof; or
- v. Any default specified in another section of this Master Agreement.

b. Upon the occurrence of an event of default, Lead State shall issue a written notice of default, identifying the nature of the default, and providing a period of 15 calendar days in which Contractor shall have an opportunity to cure the default. The Lead State shall not be required to provide advance written notice or a cure period and may immediately terminate this Master Agreement in whole or in part if the Lead State, in its sole discretion, determines that it is reasonably necessary to preserve public safety or prevent immediate public crisis. Time allowed for cure shall not diminish or eliminate Contractor's liability for damages, including liquidated damages to the extent provided for under this Master Agreement.

c. If Contractor is afforded an opportunity to cure and fails to cure the default within the period specified in the written notice of default, Contractor shall be in breach of its

obligations under this Master Agreement and Lead State shall have the right to exercise any or all of the following remedies:

- i. Exercise any remedy provided by law; and
- ii. Terminate this Master Agreement and any related Contracts or portions thereof; and
- iii. Impose liquidated damages as provided in this Master Agreement; and
- iv. Suspend Contractor from receiving future bid solicitations; and
- v. Suspend Contractor's performance; and
- vi. Withhold payment until the default is remedied.

d. In the event of a default under a Participating Addendum, a Participating Entity shall provide a written notice of default as described in this section and have all of the rights and remedies under this paragraph regarding its participation in the Master Agreement, in addition to those set forth in its Participating Addendum.

**8. DELIVERY** Unless otherwise indicated in the Master Agreement, the prices are the delivered price to any Participating State agency or political subdivision. All deliveries shall be F.O.B. destination with all transportation and handling charges paid by the contractor. Responsibility and liability for loss or damage shall remain the Contractor until final inspection and acceptance when responsibility shall pass to the Buyer except as to latent defects, fraud and Contractor's warranty obligations. The minimum shipment amount will be found in the special terms and conditions. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an order to be shipped without transportation charges that is back ordered shall be shipped without charge.

**9. FORCE MAJEURE** Neither party to this Master Agreement shall be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. WSCA-NASPO may terminate this Master Agreement after determining such delay or default will reasonably prevent successful performance of the Master Agreement.

**10. GOVERNING LAW** This procurement and the resulting agreement shall be governed by and construed in accordance with the laws of the state sponsoring and administering the procurement. The construction and effect of any Participating Addendum or order against the Master Agreement(s) shall be governed by and construed in accordance with the laws of the Participating Entity's State. Venue for any claim, dispute or action concerning an order placed against the Master Agreement(s) or the effect of an Participating Addendum shall be in the Purchasing Entity's State.

**11. INDEMNIFICATION** The Contractor shall defend, indemnify and hold harmless WSCA-NASPO, the Lead State and Participating Entities along with their officers, agencies, and employees as well as any person or entity for which they may be liable from and against claims, damages or causes of action including reasonable attorneys' fees and related costs for any death, injury, or damage to property arising from act(s), error(s), or omission(s) of the Contractor, its employees or subcontractors or volunteers, at any tier, relating to the

performance under the Master Agreement. This section is not subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement

**12. INDEMNIFICATION - INTELLECTUAL PROPERTY** The Contractor shall defend, indemnify and hold harmless WSCA-NASPO, the Lead State and Participating Entities along with their officers, agencies, and employees as well as any person or entity for which they may be liable ("Indemnified Party") from and against claims, damages or causes of action including reasonable attorneys' fees and related costs arising out of the claim that the Product or its use, infringes Intellectual Property rights ("Intellectual Property Claim"). The Contractor's obligations under this section shall not extend to any combination of the Product with any other product, system or method, unless:

(1) the Product, system or method is:

(a) provided by the Contractor or the Contractor's subsidiaries or affiliates;

(b) specified by the Contractor to work with the Product; or

(c) reasonably required, in order to use the Product in its intended manner, and the infringement could not have been avoided by substituting another reasonably available product, system or method capable of performing the same function; or

(2) it would be reasonably expected to use the Product in combination with such product, system or method.

The Indemnified Party shall notify the Contractor within a reasonable time after receiving notice of an Intellectual Property Claim. Even if the Indemnified Party fails to provide reasonable notice, the Contractor shall not be relieved from its obligations unless the Contractor can demonstrate that it was prejudiced in defending the Intellectual Property Claim resulting in increased expenses or loss to the Contractor. If the Contractor promptly and reasonably investigates and defends any Intellectual Property Claim, it shall have control over the defense and settlement of it. However, the Indemnified Party must consent in writing for any money damages or obligations for which it may be responsible. The Indemnified Party shall furnish, at the Contractor's reasonable request and expense, information and assistance necessary for such defense. If the Contractor fails to vigorously pursue the defense or settlement of the Intellectual Property Claim, the Indemnified Party may assume the defense or settlement of it and the Contractor shall be liable for all costs and expenses, including reasonable attorneys' fees and related costs, incurred by the Indemnified Party in the pursuit of the Intellectual Property Claim. This section is not subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement.

**13. INDEPENDENT CONTRACTOR** The contractor shall be an independent contractor, and as such shall have no authorization, express or implied to bind WSCA-NASPO or the respective states to any agreements, settlements, liability or understanding whatsoever, and agrees not

to perform any acts as agent for WSCA-NASPO or the states, except as expressly set forth herein.

**14. INDIVIDUAL CUSTOMER** Except to the extent modified by a Participating Addendum, each Participating Entity shall follow the terms and conditions of the Master Agreement and applicable Participating Addendum and will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement, including but not limited to, any indemnity or to recover any costs allowed in the Master Agreement and applicable Participating Addendum for their purchases. Each Participating Entity will be responsible for its own charges, fees, and liabilities. The Contractor will apply the charges and invoice each Participating Entity individually.

**15. INSURANCE** Contractor shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the Participating Entity's state and having a rating of A-, Class VII or better, in the most recently published edition of Best's Reports. Failure to buy and maintain the required insurance may result in this Master Agreement's termination or at a Participating Entity's option, result in termination of its Participating Addendum.

Coverage shall be written on an occurrence basis. The minimum acceptable limits shall be as indicated below, with no deductible for each of the following categories:

- a) Commercial General Liability covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate;
- b) Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.

Contractor shall pay premiums on all insurance policies. Such policies shall also reference this Master Agreement and shall have a condition that they not be revoked by the insurer until thirty (30) calendar days after notice of intended revocation thereof shall have been given to Participating Entity by the Contractor.

Prior to commencement of the work, Contractor shall provide to the Participating Entity a written endorsement to the Contractor's general liability insurance policy that (i) names the Participating Entity as an additional insured, (ii) provides that no material alteration, cancellation, non-renewal, or expiration of the coverage contained in such policy shall have effect unless the named Participating Entity has been given at least thirty (30) days prior written notice, and (iii) provides that the Contractor's liability insurance policy shall be primary, with any liability insurance of the Participating Entity as secondary and noncontributory.

Contractor shall furnish to Participating Entity copies of certificates of all required insurance within thirty (30) calendar days of the Participating Addendum's effective date and prior to performing any work. Copies of renewal certificates of all required insurance shall be

furnished within thirty (30) days after renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this section. Failure to provide evidence of coverage may, at State's sole option, result in this Master Agreement's termination.

Coverage and limits shall not limit Contractor's liability and obligations under this Master Agreement.

**16. LAWS AND REGULATIONS** Any and all supplies, services and equipment offered and furnished shall comply fully with all applicable Federal and State laws and regulations.

**17. LICENSE OF PRE-EXISTING INTELLECTUAL PROPERTY** Contractor grants to the Participating Entity a nonexclusive, perpetual, royalty-free, irrevocable, unlimited license to publish, translate, reproduce, modify, deliver, perform, display, and dispose of the Intellectual Property, and its derivatives, used or delivered under this Master Agreement, but not created under it ("Pre-existing Intellectual Property"). The license shall be subject to any third party rights in the Pre-existing Intellectual Property. Contractor shall obtain, at its own expense, on behalf of the Participating Entity, written consent of the owner for the licensed Pre-existing Intellectual Property.

**18. NO WAIVER OF SOVEREIGN IMMUNITY** In no event shall this Master Agreement, any Participating Addendum or any contract or any purchase order issued thereunder, or any act of a Lead State or a Participating Entity, be a waiver by the Participating Entity of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.

If a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the Participating State. This section applies to a claim brought against the Participating State only to the extent Congress has appropriately abrogated the Participating State's sovereign immunity and is not consent by the Participating State to be sued in federal court. This section is also not a waiver by the Participating State of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

**19. ORDER NUMBERS** Master Agreement order and purchase order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.

**20. PARTICIPANTS** WSCA-NASPO is the cooperative purchasing arm of the National Association of State Procurement Officials. It is a cooperative group contracting consortium for state government departments, institutions, agencies and political subdivisions (e.g.,

colleges, school districts, counties, cities, etc.,) for all 50 states, the District of Columbia and the organized US territories. Obligations under this Master Agreement are limited to those Participating States who have signed a Participating Addendum where contemplated by the solicitation. Financial obligations of Participating States are limited to the orders placed by the departments or other state agencies and institutions having available funds. Participating States incur no financial obligations on behalf of political subdivisions. Unless otherwise specified in the solicitation, the resulting award(s) will be permissive.

**21. ENTITY PARTICIPATION** Use of specific WSCA-NASPO cooperative Master Agreements by state agencies, political subdivisions and other entities (including cooperatives) authorized by individual state's statutes to use state contracts are subject to the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the respective State Chief Procurement Official.

**22. PAYMENT** Payment for completion of a contract order is normally made within 30 days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance. Payments will be remitted by mail. Payments may be made via a State or political subdivision "Purchasing Card" with no additional charge.

**23. PUBLIC INFORMATION** This Master Agreement and all related documents are subject to disclosure pursuant to the Participating Entity's public information laws.

**24. RECORDS ADMINISTRATION AND AUDIT** The contractor will maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the contractor for costs authorized by this Master Agreement. These records will be retained by the contractor for at least four years after the Master Agreement terminates, or until all audits initiated within the four years have been completed, whichever is later. The contractor agrees to allow WSCA-NASPO, State and Federal auditors, and state agency staff access to all the records of this Master Agreement and any order placed under this Master Agreement, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.

**25. REPORTS and ADMINISTRATIVE FEES** The contractor shall submit quarterly reports to the WSCA-NASPO Contract Administrator showing the quantities and dollar volume of purchases by each participating entity.

The contractor must pay a WSCA-NASPO administrative fee of one quarter of one percent (.25%) in accordance with the terms and conditions of the Master Agreement. The WSCA-NASPO administrative fee shall be submitted quarterly and is based on sales of products and services. The WSCA-NASPO administration fee is not negotiable. This fee is to be included as part of the pricing submitted with proposal.

Additionally, some States may require that an additional fee be paid directly to the State on purchases made by procuring entities within that State. For all such requests, the fee level, payment method and schedule for such reports and payments will be incorporated in a Participating Addendum that is made a part of the Master Agreement. The contractor may adjust the Master Agreement pricing accordingly for purchases made by procuring agencies within the jurisdiction of the State. All such agreements may not affect the WSCA-NASPO administrative fee or the prices paid by the procuring agencies outside the jurisdiction of the State requesting the additional fee.

**26. STANDARD OF PERFORMANCE AND ACCEPTANCE** The Standard of Performance applies to all Product(s) purchased under this Master Agreement, including any additional, replacement, or substitute Product(s) and any Product(s) which are modified by or with the written approval of Contractor after Acceptance by the Participating Entity. The Acceptance Testing period shall be thirty (30) calendar days or other time period identified in the solicitation or the Participating Addendum, starting from the day after the Product is installed and Contractor certifies that the Product is ready for Acceptance Testing. If the Product does not meet the Standard of Performance during the initial period of Acceptance Testing, Participating Entity may, at its discretion, continue Acceptance Testing on a day-to-day basis until the Standard of Performance is met. Upon rejection, the Contractor will have fifteen (15) calendar days to cure the Standard of Performance issue(s). If after the cure period, the Product still has not met the Standard of Performance Participating Entity may, at its option: (1) declare Contractor to be in breach and terminate the Order; (2) demand replacement Product from Contractor at no additional cost to Participating Entity; or, (3) continue the cure period for an additional time period agreed upon by the Participating Entity and the Contractor. Contractor shall pay all costs related to the preparation and shipping of Product returned pursuant to the section. No Product shall be accepted and no charges shall be paid until the Standard of Performance is met. The warranty period will begin upon Acceptance.

**27. SYSTEM FAILURE OR DAMAGE** In the event of system failure or damage caused by the Contractor or its Product, the Contractor agrees to use its best efforts to restore or assist in restoring the system to operational capacity.

**28. TITLE OF PRODUCT** Upon Acceptance by the Participating Entity, Contractor shall convey to Participating Entity title to the Product free and clear of all liens, encumbrances, or other security interests. Transfer of title to the Product shall include an irrevocable and perpetual license to use the Embedded Software in the Product. If Participating Entity subsequently transfers title of the Product to another entity, Participating Entity shall have the right to transfer the license to use the Embedded Software with the transfer of Product title. A subsequent transfer of this software license shall be at no additional cost or charge to either Participating Entity or Participating Entity's transferee.

**29. WAIVER OF BREACH** Failure of Lead State or Participating Entity to declare a default or enforce any rights and remedies shall not operate as a waiver under this Master Agreement or Participating Addendum. Any waiver by the Lead State or Participating Entity must be in writing. Waiver by the Lead State or Participating Entity of any default, right or remedy under this Master Agreement or Participating Addendum, or breach of any terms or requirements shall not be construed or operate as a waiver of any subsequent default or breach of such term or requirement, or of any other term or requirement under this Master Agreement or Participating Addendum.

**30. WARRANTY** The Contractor warrants for a period of one year from the date of Acceptance that: (a) the Product performs according to all specific claims that the Contractor made in its response to the solicitation, (b) the Product is suitable for the ordinary purposes for which such Product is used, (c) the Product is suitable for any special purposes identified in the solicitation or for which the Participating Entity has relied on the Contractor's skill or judgment, (d) the Product is designed and manufactured in a commercially reasonable manner, and (e) the Product is free of defects. Upon breach of the warranty, the Contractor will repair or replace (at no charge to the Participating Entity) the Product whose nonconformance is discovered and made known to the Contractor. If the repaired and/or replaced Product proves to be inadequate, or fails of its essential purpose, the Contractor will refund the full amount of any payments that have been made. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation, actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.

See Attachment D - Vendor RFP Response for warranty details.

**31. ASSIGNMENT OF ANTITRUST RIGHTS** Contractor irrevocably assigns to a Participating Entity any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of state or federal antitrust laws (15 U.S.C. § 1-15 or a Participating Entity's state antitrust provisions), as now in effect and as may be amended from time to time, in connection with any goods or services provided to the Contractor for the purpose of carrying out the Contractor's obligations under this Master Agreement or Participating Addendum, including, at a Participating Entity's option, the right to control any such litigation on such claim for relief or cause of action.

Contractor shall require any subcontractors hired to perform any of Contractor's obligations, under this Master Agreement or Participating Addendum, to irrevocably assign to a Participating Entity, as third party beneficiary, any right, title or interest that has accrued or which may accrue in the future by reason of any violation of state or federal antitrust laws (15 U.S.C. § 1-15 or a Participating Entity's state antitrust provisions), as now in effect and as may be amended from time to time, in connection with any goods or services provided to the subcontractor for the purpose of carrying out the subcontractor's obligations to the Contractor in pursuance of this Master Agreement or Participating Addendum, including, at a



Participating Entity's option, the right to control any such litigation on such claim for relief or cause of action.

**32. WSCA-NASPO eMARKET CENTER** Awarded responders are required to participate in the WSCA-NASPO eMarket Center and, working through WSCA-NASPO's contractor (SciQuest), connect with the eMarket Center. The ideal situation would be to use either a hosted (by SciQuest) or Punchout Level 2 catalog configurations, but actual requirements will be determined by the Lead State Contract Administrator, WSCA-NASPO, WSCA-NASPO's contractor (SciQuest) and the awarded contractor, after award. Participation does not require an awarded responder to have any special level of technology or technological understanding.

### **Definitions**

**Acceptance** - means a written notice from a purchasing entity to contractor advising Contractor that the Product has passed its Acceptance Testing. Acceptance of a product for which acceptance testing is not required shall occur following the completion of delivery, installation, if required, and a reasonable time for inspection of the product, unless the Purchasing Entity provides a written notice of rejection to contractor.

**Acceptance Testing** - means the process for ascertaining that the Product meets the standards set forth in the section titled Standard of Performance and Acceptance, prior to Acceptance by the Purchasing Entity.

**Contractor** - means the person or entity delivering Products or performing services under the terms and conditions set forth in this Master Agreement.

**Intellectual Property** - means any and all patents, copyrights, service marks, trademarks, trade secrets, trade names, patentable inventions, or other similar proprietary rights, in tangible or intangible form, and all rights, title, and interest therein.

**Lead State** - means the State conducting this cooperative solicitation and centrally administering any resulting Master Agreement with the permission of the Signatory States.

**Master Agreement** - means the underlying agreement executed by and between the Lead State, as WSCA-NASPO contract administrator, acting on behalf of WSCA-NASPO, and the Contractor, as now or hereafter amended.

**Order** - means any purchase order, sales order, or other document used by a Participating Entity to order the Products.

**Participating Addendum** - means a bilateral agreement executed by a Contractor and a Participating Entity incorporating this Master Agreement and any other additional Participating Entity specific language or other requirements ,e.g. ordering procedures specific to the Participating Entity, other terms and conditions.

**Participating Entity** - means a state, or other legal entity, properly authorized by a state to enter into the Master Agreement or Participating Addendum or who is authorized to order under the Master Agreement or Participating Addendum.

**Product** - Any equipment, software (including embedded software), documentation, or deliverable supplied or created by the Contractor pursuant to this Master Agreement.

**WSCA-NASPO** -is a cooperative group contracting consortium for state procurement officials, representing departments, institutions, agencies, and political subdivisions (i.e., colleges, school districts, counties, cities, etc.) for all states and the District of Columbia. WSCA-NASPO is a cooperative purchasing arm of the National Association of State Procurement Officials (NASPO).

#### **Additional Definitions and Alternative Terms for Consideration**

Below are additional definitions and alternative terms for consideration by the sourcing teams depending upon the nature of the solicitation and negotiations between the Contractor and Vendor.

**Embedded Software** - means one or more software applications which permanently reside on a computing device.

**Machine Code** - means microcode, basic input/output system code, utility programs, device drivers, diagnostics, and another code delivered with a computing device for the purpose of enabling the function of the computing device, as stated in its published specifications.

(revised March 2013)

## **ATTACHMENT B:**

### **SHORETEL STATEMENT OF WORK**

#### **Categories authorized under this contract:**

**5.3.0 UNIFIED COMMUNICATIONS (UC)** — A set of products that provides a consistent unified user interface and user experience across multiple devices and media types. Unified Communications that is able to provide services such as session management, voice, video, messaging, mobility, and web conferencing. It can provide the foundation for advanced unified communications capabilities of IM and presence-based services and extends telephony features and capabilities to packet telephony network devices such as IP phones, media processing devices, Voice over IP (VoIP) gateways, and multimedia applications. Additional services, such as unified messaging, multimedia conferencing, collaborative contact centers, and interactive multimedia response systems, are made possible through open telephony APIs. General UC solution capabilities should include:

- High Availability for Call Processing
- Hardware Platform High Availability
- Network Connectivity High Availability
- Call Processing Redundancy

**5.3.0.1 IP Telephony** — Solutions utilized to provide the delivery of the telephony application (for example, call setup and teardown, and telephony features) over IP, instead of using circuit-switched or other modalities. Capabilities should include:

- Support for analog, digital, and IP endpoints

- Centralized Management

- Provide basic hunt group and call queuing capabilities

- Flexibility to configure queue depth and hold time, play unique announcements and Music on Hold (MoH), log in and log out users from a queue and basic queue statistics (from the phone)

- E911 Support

**5.3.0.2 Instant messaging/ Presence** — Solutions that allow communication over the Internet that offers quick transmission of text-based messages from sender to receiver. In push mode between two or more people using personal computers or other devices, along with shared clients, instant messaging basically offers real-time direct written language-based online chat. Instant messaging may also provide video calling, file sharing, PC-to-PC voice calling and PC-to-regular-phone calling.

**5.3.0.3 Unified messaging** — Integration of different electronic messaging and communications media (e-mail, SMS, Fax, voicemail, video messaging, etc.) technologies into a single interface, accessible from a variety of different devices.

- Ability to access and manage voice messages in a variety of ways, using email inbox, Web browser, desktop client, VoIP phone, or mobile phone

- Visual Voicemail Support (Optional)

**5.3.0.4 Contact Center** — A computer-based system that provides call and contact routing for high-volume telephony transactions, with specialist answering "agent" stations and a sophisticated real-time contact management system. The definition includes all contact center systems that provide inbound contact

handling capabilities and automatic contact distribution, combined with a high degree of sophistication in terms of dynamic contact traffic management.

**5.3.0.5 Communications End Points and Applications**

Attendant Consoles

IP Phones

**5.3.0.6 UC Network Management** — Provides end-to-end service management for Unified Communications. Capabilities include testing, performance monitoring, configuration management, and business intelligence reporting.

**5.3.0.7 Collaboration** — Voice, video, and web conferencing; messaging; mobile applications; and enterprise social software.

**5.3.0.8 Collaborative Video** — A set of immersive video technologies that enable people to feel or appear as if they were present in a location that they are not physically in. Immersive video consists of a multiple codec video system, where each meeting attendee uses an immersive video room to “dial in” and can see/talk to every other member on a screen (or screens) as if they were in the same room and provides call control that enables intelligent video bandwidth management.

**5.3.0.8.1 Content Delivery Systems (CDS)** — A large distributed system of servers deployed in multiple data centers connected by the Internet. The purpose of the content delivery system is to serve content to end-users with high availability and high performance. CDSs serve content over the Internet, including web objects (text, graphics, URLs, and scripts), downloadable objects (media files, software, documents), applications (e-commerce, portals), live streaming media, on-demand streaming media, and social networks.

**5.3.0.8.2 Physical Security** — Technology utilized to restricting physical access by unauthorized people to controlled facilities. Technologies include:

- a. Access control systems
- b. Detection/Identification systems, such as surveillance systems, closed circuit television cameras, or IP camera networks and the associated monitoring systems.
- c. Response systems such as alert systems, desktop monitoring systems, radios, mobile phones, IP phones, and digital signage
- d. Building and energy controls

**STATE OF UTAH CONTRACT NUMBER – AR627**

**Attachment C – Pricing  
Solicitation Number JP14001  
WSCA-NASPO Data Communications RFP**

**Vendor Name:** ShoreTel

**RFP Product Categories:**

**Minimum Discount Percentage:**

**5.3.0 UNIFIED COMMUNICATIONS (UC)**

**Discount % 35**

**Current ShoreTel Inc. pricing sheets, approved by the State of Utah, can be found at the following web link:**

**SHORETEL PRICING SHEETS CLICK HERE**

**IMPORTANT:** The minimum discount percentage listed in this attachment is for general informational purposes only and may not apply to every line item authorized under this contract. For specific item pricing, please refer to the contract price list weblink provided in this document.

Vendors are required to post state specific pricing on their hosted website or through the WSCA-NASPO eMarket center as required by solicitation JP14001, in addition to the vendor pricing sheets approved and hosted by the State of Utah's master contract summary sheet. The State of Utah vendor pricing sheets will serve as the approved base price and do not include any applicable state specific administrative fees. State specific pricing, hosted on the vendor website or WSCA-NASPO eMarketcenter may reflect authorized state specific administrative fees. No other fees are authorized under this contract. Pricing audits may be conducted at any time by the State of Utah, WSCA-NASPO, or 3<sup>rd</sup> party audit provider to ensure accurate pricing.

Per Solicitation JP14001, the following pricing/product requirements and instructions apply:

**1.11 Pricing Structure**

**Pricing Structure:** Pricing for the WSCA-NASPO Master Agreements shall be based on the Percent Discount off the current global MSRP Schedule applicable to United States customers.

**1.12 Price Guarantee Period**

**Price Guarantee Period:** The Data Communication Provider's Discount rate shall remain in effect for the term of the WSCA-NASPO Master Price Agreement.

**1.13 Price Escalation**

**Equipment, Supplies and Services:** Data Communications provider may update the pricing on their MSRP price list one time every year after the first year of the original contract term. The WSCA-NASPO Contract Administrator will review a documented request for a Price Schedule price list adjustment only after the Price Guarantee Period.

**1.14 Price Reductions**

In the event of a price decrease in any category of product at any time during the contract in a Provider's Price Schedule, including renewal options, the WSCA-NASPO Contract Administrator shall be notified immediately. All Price Schedule price reductions shall be effective upon the notification provided to the WSCA-NASPO Master Agreement Administrator.

#### **1.20 WSCA Administrative Fee**

The Contracted Supplier must pay a WSCA-NASPO administrative fee of one quarter of one percent (.025%) in accordance with the terms and conditions of the contract. The WSCA-NASPO administrative fee shall be submitted quarterly and is based on the actual sales of all products and services in conjunction with your quarterly reports. The WSCA-NASPO administrative fee must be included when determining the pricing offered. The WSCA-NASPO administrative fee is not negotiable and shall not be added as a separate line item on an invoice.

Additionally, some WSCA-NASPO participating entities may require that an administrative fee be paid directly to the WSCA-NASPO participating entity on purchases made by purchasing entities within that State. For all such requests, the fee percentage, payment method and payment schedule for the participating entity's administrative fee will be incorporated in the Participating Addendum. Data Communications Provider will be held harmless, and may adjust (increase) the WSCA-NASPO Master Agreement pricing by the fee percentage for that participating entity accordingly for purchases made by purchasing entities within the jurisdiction of the State. All such agreements may not affect the WSCA-NASPO fee or the prices paid by the purchasing entities outside the jurisdiction of the participating entities requesting the additional fee.

#### **5.3.2 ADDING PRODUCTS**

The ability to add new equipment and services is for the convenience and benefit of WSCA-NASPO, the Participating States, and all the Authorized Purchasers. The intent of this process is to promote "one-stop shopping" and convenience for the customers and equally important, to make the contract flexible in keeping up with rapid technological advances. The option to add new product or service categories and/items will expedite the delivery and implementation of new technology solutions for the benefit of the Authorized Purchasers.

After the contracts are awarded, additional IT product categories and/or items may be added per the request of the Contractor, a Participating State, an Authorized Purchaser or WSCA-NASPO. Additions may be ad hoc and temporary in nature or permanent. All additions to an awarded Contractor or Manufacturer's offerings must be products, services, software, or solutions that are commercially available at the time they are added to the contract award and fall within the original scope and intent of the RFP (i.e., converged technologies, value adds to manufacturer's solution offerings, etc.).

**5.3.2.1 New Product from Contractors** — If Contractor, a Participating State, an Authorized Purchaser or WSCA-NASPO itself requests to add new product categories permanently, then all awarded Contractors (Manufacturers) will be notified of the proposed change and will have the opportunity to work with WSCA to determine applicability, introduction, etc. Any new products or services must be reviewed and approved by the WSCA-NASPO Contract Administrator.

**5.3.2.2 Ad Hoc Product Additions** — A request for an ad hoc, temporary addition of a product category/item must be submitted to WSCA-NASPO via the governmental entity's contracting/purchasing officer. Ad hoc, temporary requests will be handled on a case-by-case basis.

**5.3.2.3 Pricelist Updates** — As part of each Contractor's ongoing updates to its pricelists throughout the contract term, Contractor can add new SKUs to its awarded product categories that may have been developed in-house or obtained through mergers, acquisitions or joint ventures; provided, however, that such new SKUs fall within the Contractor's awarded product categories.

**Xtelesis Corporation**

800 Airport Blvd

Phone: (650)239-1400 - Fax: 1-650-239-1410 - Email: kdogen@xtelesis.com



Date	Quote #
04/23/14	XTLQ14479

**Sold To:** City of Belmont  
 Bill Mitchell  
 One Twin Pines Lane  
 Belmont, CA 94002  
 United States

**Phone:** (650) 637-2970  
**Fax:**

**Ship To:** City of Belmont  
 Bill Mitchell  
 One Twin Pines Lane  
 Belmont, CA 94002  
 United States

**Phone:** (650) 637-2970  
**Fax:**

Terms	Rep	P.O. Number	Ship Via
Payment Upfront for everything but	kdogen		Ground

Ln #	Qty	Mfg. Part Number	Description	List Price	Disc Price	Ext. Price
1	125	630-1044	ShorePhone IP230g - Black (8.1 or later)	\$329.00	\$203.98	\$25,497.50
2	125	690-1047-01	Extension & Mailbox License	\$200.00	\$124.00	\$15,500.00
3	49	690-1052-01	Mailbox-only License (requires ShoreTel 5.2 or higher)	\$90.00	\$55.80	\$2,734.20
4	4	690-1014-01	Softphone License (7.5 and earlier versions)	\$150.00	\$93.00	\$372.00
5	4	630-1073	ShoreTel IP Phone 655 with anti-glare screen - (Requires ShoreTel 11.1 or later)	\$749.00	\$464.38	\$1,857.52
6	2	630-1082	Satellite microphones for ShoreTel IP Phone 655, Qty 2	\$195.00	\$120.90	\$241.80
7	1	620-1254	Starter Kit : IP930D DECT Phone US / Canada (Includes Base, Handset & Charger) - Requires ST 14 or later	\$599.00	\$371.38	\$371.38
8						
9			<b>TWIN PINES LANE (CH)</b>			
10	1	600-1069-10	ShoreGear T1k - 1U half width, Max Capacities - 1 T1, 0 IP phones, 0 Analog exts, 0 LS only trunks, 0 Universal ports. Digital trunk support only. Requires one Tray (SKU 10223) for every two units. (requires ShoreTel 8 or later)	\$3,495.00	\$2,166.90	\$2,166.90
11	1	600-1073	ShoreGear 24A - 1U full width, Max Capacities - 24 Analog extensions. No IP Phone or trunk support. (requires ShoreTel 8 or later)	\$2,995.00	\$1,856.90	\$1,856.90
12	2	600-1042	ShoreGear 90 - 1U half width, Max Capacities - 90 IP phones, 4 Analog exts, 8 LS trunks, 0 Universal ports. Not all maximum capacities can be reached at the same time. Requires one Tray (SKU 10223) for every two units.	\$2,995.00	\$1,856.90	\$3,713.80
13	1	FF220-GB/IE	Multi-Tech FaxFinder FF220 Fax Server - 2 Communication Lines - Analog	\$1,995.00	\$1,236.90	\$1,236.90
14	1	610-1122-01	Operator Access License	\$595.00	\$368.90	\$368.90
15	2	620-1057-02	Kit, rack mounting tray, for ShoreGear Switch 1U half width, holds two 1U half width switches	\$95.00	\$58.90	\$117.80
16	1	620-1119-01	Kit, Analog Harmonica & Telco 25PR (FF) Cable For ShoreGear 30, 50, 90 and 220T1A Switches	\$99.00	\$61.38	\$61.38



Ln #	Qty	Mfg. Part Number	Description	List Price	Disc Price	Ext. Price
17						
18			<b>TWIN PINES LANE (PD)</b>			
19	1	600-1042	ShoreGear 90 - 1U half width, Max Capacities - 90 IP phones, 4 Analog exts, 8 LS trunks, 0 Universal ports. Not all maximum capacities can be reached at the same time. Requires one Tray (SKU 10223) for every two units.	\$2,995.00	\$1,856.90	\$1,856.90
20	1	690-1058	Additional Site License	\$495.00	\$306.90	\$306.90
21	1	620-1057-02	Kit, rack mounting tray, for ShoreGear Switch 1U half width, holds two 1U half width switches	\$95.00	\$58.90	\$58.90
22	1	620-1119-01	Kit, Analog Harmonica & Telco 25PR (FF) Cable For ShoreGear 30, 50, 90 and 220T1A Switches	\$99.00	\$61.38	\$61.38
23						
24			<b>911 GRANADA STREET</b>			
25	1	600-1071	ShoreGear 30 - 1U half width, Max Capacities - 30 IP phones, 2 Analog exts, 2 LS trunks, 0 Universal ports. Not all maximum capacities can be reached at the same time. Requires one Tray (SKU 10223) for every two units. (requires ShoreTel 8 or later)	\$1,595.00	\$988.90	\$988.90
26	1	690-1058	Additional Site License	\$495.00	\$306.90	\$306.90
27	1	620-1057-02	Kit, rack mounting tray, for ShoreGear Switch 1U half width, holds two 1U half width switches	\$95.00	\$58.90	\$58.90
28	1	620-1119-01	Kit, Analog Harmonica & Telco 25PR (FF) Cable For ShoreGear 30, 50, 90 and 220T1A Switches	\$99.00	\$61.38	\$61.38
29						
30			<b>2701 CIPRIANI</b>			
31	1	600-1071	ShoreGear 30 - 1U half width, Max Capacities - 30 IP phones, 2 Analog exts, 2 LS trunks, 0 Universal ports. Not all maximum capacities can be reached at the same time. Requires one Tray (SKU 10223) for every two units. (requires ShoreTel 8 or later)	\$1,595.00	\$988.90	\$988.90
32	1	690-1058	Additional Site License	\$495.00	\$306.90	\$306.90
33	1	620-1057-02	Kit, rack mounting tray, for ShoreGear Switch 1U half width, holds two 1U half width switches	\$95.00	\$58.90	\$58.90
34	1	620-1119-01	Kit, Analog Harmonica & Telco 25PR (FF) Cable For ShoreGear 30, 50, 90 and 220T1A Switches	\$99.00	\$61.38	\$61.38
35						
36			<b>20 TWIN PINES LANE</b>			
37	1	600-1071	ShoreGear 30 - 1U half width, Max Capacities - 30 IP phones, 2 Analog exts, 2 LS trunks, 0 Universal ports. Not all maximum capacities can be reached at the same time. Requires one Tray (SKU 10223) for every two units. (requires ShoreTel 8 or later)	\$1,595.00	\$988.90	\$988.90
38	1	690-1058	Additional Site License	\$495.00	\$306.90	\$306.90
39	1	620-1057-02	Kit, rack mounting tray, for ShoreGear Switch 1U half width, holds two 1U half width switches	\$95.00	\$58.90	\$58.90
40	1	620-1119-01	Kit, Analog Harmonica & Telco 25PR (FF) Cable For ShoreGear 30, 50, 90 and 220T1A Switches	\$99.00	\$61.38	\$61.38
41						
42			<b>30 TWIN PINES</b>			
43	1	600-1071	ShoreGear 30 - 1U half width, Max Capacities - 30 IP phones, 2 Analog exts, 2 LS trunks, 0 Universal ports. Not all maximum capacities can	\$1,595.00	\$988.90	\$988.90



Ln #	Qty	Mfg. Part Number	Description	List Price	Disc Price	Ext. Price
			be reached at the same time. Requires one Tray (SKU 10223) for every two units. (requires ShoreTel 8 or later)			
44	1	690-1058	Additional Site License	\$495.00	\$306.90	\$306.90
45	1	620-1057-02	Kit, rack mounting tray, for ShoreGear Switch 1U half width, holds two 1U half width switches	\$95.00	\$58.90	\$58.90
46	1	620-1119-01	Kit, Analog Harmonica & Telco 25PR (FF) Cable For ShoreGear 30, 50, 90 and 220T1A Switches	\$99.00	\$61.38	\$61.38
47						
48						
		<b>110 SEM LANE (10 VOIP)</b>				
49	2	600-1071	ShoreGear 30 - 1U half width, Max Capacities - 30 IP phones, 2 Analog exts, 2 LS trunks, 0 Universal ports. Not all maximum capacities can be reached at the same time. Requires one Tray (SKU 10223) for every two units. (requires ShoreTel 8 or later)	\$1,595.00	\$988.90	\$1,977.80
50	2	690-1058	Additional Site License	\$495.00	\$306.90	\$613.80
51	2	620-1057-02	Kit, rack mounting tray, for ShoreGear Switch 1U half width, holds two 1U half width switches	\$95.00	\$58.90	\$117.80
52	2	620-1119-01	Kit, Analog Harmonica & Telco 25PR (FF) Cable For ShoreGear 30, 50, 90 and 220T1A Switches	\$99.00	\$61.38	\$122.76
53						
54						
		<b>550 Parkway</b>				
55	1	600-1071	ShoreGear 30 - 1U half width, Max Capacities - 30 IP phones, 2 Analog exts, 2 LS trunks, 0 Universal ports. Not all maximum capacities can be reached at the same time. Requires one Tray (SKU 10223) for every two units. (requires ShoreTel 8 or later)	\$1,595.00	\$988.90	\$988.90
56	1	690-1058	Additional Site License	\$495.00	\$306.90	\$306.90
57	1	620-1057-02	Kit, rack mounting tray, for ShoreGear Switch 1U half width, holds two 1U half width switches	\$95.00	\$58.90	\$58.90
58	1	620-1119-01	Kit, Analog Harmonica & Telco 25PR (FF) Cable For ShoreGear 30, 50, 90 and 220T1A Switches	\$99.00	\$61.38	\$61.38
59						
60	1	XTL-PREMIUM 5 YEAR 2014	Xtelesis Premium ShoreTel Support - 5 Year 2014. Does not include Phones which is optional. See Attached Support Matrix for details	\$31,052.00	\$31,052.00	\$31,052.00
61	1	XTL-SHORETEL-INST-MS	Xtelesis Installation of Multi-Site ShoreTel System Does not include setting up phones, which customer will handle internally	\$13,750.00	\$13,750.00	\$13,750.00
62	1	XTL-SHORETEL-ADMT RN	ShoreTel Administrator Training - Up to 4 People per Session	\$495.00	\$495.00	\$495.00
63	12	XTL-SHORETEL-GRPT RN	ShoreTel Group Training. Single 1 1/2 Hour Class, up to 8 students.	\$225.00	\$225.00	\$2,700.00

Sub Total	\$116,290.62
Estimated Sales Tax	\$4,217.70
Shipping	\$0.00
<b>Total</b>	<b>\$120,508.32</b>

The person signing below has the requisite authority to execute this binding sales order on behalf of the Customer whose name appears below. Customer agrees to all of Sales Order Standard Terms and Conditions as set forth on Xtelesis' WEB site at [www.xtelesis.com/termsandconditions.php](http://www.xtelesis.com/termsandconditions.php) and acknowledges that such terms and conditions can only be changed by an Xtelesis Corporation Modification to Terms and Conditions, any such modification requiring the signature of an Officer of Xtelesis Corporation. Actual Shipping costs and Sales Tax will be added to the final invoice. QUOTES ARE NOT FINAL UNTIL AN XTELESIS DESIGN REVIEW HAS TAKEN PLACE. (JD-071309)

Customer Name: \_\_\_\_\_

Signed By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## ShoreTel Support 2014



**Xtelesis**   
Do more with your network.

Service Levels	Premium		Preferred	
Response Time to System Down	Normal Bus. Hrs. 30 minutes	All Other Times 2 hours	Normal Bus. Hrs. 1 hour	All Other Times 4 hours
Response Time to Non-Critical Issue	Normal Bus. Hrs. 2 hours	All Other Times 4 hours	Normal Bus. Hrs. 4 hours	All Other Times 8 hours
Response time to case opened via email	Normal Bus. Hrs. 2 hours	All Other Times 4 hours	Normal Bus. Hrs. 4 hours	All Other Times 8 hours
Hardware Replacement	Advanced replacement 4 hours		Advanced replacement, next business day	
Other Support Items	Premium		Preferred	
ShoreTel Software	Yes		Yes	
Xtelesis performed software upgrades	Unlimited		2 / year	
Authorized Contacts	Trained / Designated		Trained / Designated	
Guaranteed Live Answer of Support Hotline During Business Hours	Yes		No	
Personal phone number for support	Yes		No	
Remote System Health Checks	2 / year		1 / year	
Technical Account Manager (TAM)	Yes		\$3,000/quarter	
System Down Support	Included		Included	
Standard Break / Fix Support	Included		Included	
Standard MACD (Moves, Adds, Changes and Deletions)	Included		Included	
Onsite Support when required	Included		\$150/hour, 2 hour minimum	
Network Troubleshooting	Included when network infrastructure has been purchased from Xtelesis.		Included when network infrastructure has been purchased from Xtelesis.	
Assistance with Carrier Trouble Shooting	Included		Included when carrier services have been purchased from Xtelesis.	
Price (as % of total list price of product in production) *Discounts apply only when paid in advance for the full term.	12 Month: 18% 36 Month: 16% 60 Month: 14%		12 Month: 12% 36 Month: 11% 60 Month: 10%	
Coverage on Phones	5%		5%	

Astound Broadband, LLC provided the lowest quote of \$778/month for a 5 year contract. Moving to Astound Broadband, LLC will provide a ten-fold increase in bandwidth and provide \$9,219 in annual savings which equates to \$46,096 in savings over the course of the contract.

*Special Purpose Telecommunications:*

As mentioned previously these services are for fire and burglar alarms as well as elevator lines. Current fees for this service add up to \$22,376 annually.

Multiple vendors submitted proposals and AT&T Business Solution provided the best solution based on cost. Projected cost savings by moving to AT&T Business Solution is \$7,497 annually.

**Alternatives**

1. Take no action
2. Deny recommendation
3. Refer back to staff for more information and/or alternative options.

**Attachments**

- A. Resolution
- B. Quote
- C. Contract
- D. Service Level Agreement

**Fiscal Impact**

- ☐ No Impact/Not Applicable  
☒ Funding Source Confirmed: Department Telephone Accounts

**Source:**

- ☐ Council  
☒ Staff  
☐ Citizen Initiated  
☐ Other\*

**Purpose:**

- ☐ Statutory/Contractual Requirement  
☐ Council Vision/Priority  
☐ Discretionary Action  
☒ Plan Implementation\*

**Public Outreach:**

- ☐ Posting of Agenda  
☐ Other\*

\* Information Technology Work Plan



**RESOLUTION NO. 2014-**

**RESOLUTION OF THE CITY COUNCIL AUTHORIZING THE CITY MANAGER TO ENTER INTO A FIVE YEAR AGREEMENT WITH ASTOUND BROADBAND, LLC FOR INTERNET SERVICES FOR AN ANNUAL AMOUNT NOT TO EXCEED \$9,341.**

WHEREAS, Information Technology strives to reduce operational expense associated with Internet services; and,

WHEREAS, Astound Broadband, LLC provided best value based on price, proposed solution and customer references; and,

WHEREAS, there are sufficient funds available for this purpose in the Information Technology Department's operating budget;

NOW, THEREFORE, the City Council of the City of Belmont resolves as follows:

SECTION 1. The City Manager is authorized to enter into a five year agreement with Astound Broadband, LLC for an annual amount not to exceed \$9,341.

\* \* \*

ADOPTED May 13, 2014, by the City of Belmont City Council by the following vote:

Ayes:

Noes:

Absent:

Abstain:

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

**RESOLUTION NO. 2014-**

**RESOLUTION OF THE CITY COUNCIL AUTHORIZING THE CITY MANAGER TO ENTER INTO A ONE YEAR AGREEMENT WITH AT&T BUSINESS SOLUTIONS FOR TELECOMMUNICATION SERVICES FOR AN AMOUNT NOT TO EXCEED \$14,879.**

WHEREAS, Information Technology strives to reduce operational expense associated with telecommunication services; and,

WHEREAS, AT&T Business Solutions provided best value based on price; and,

WHEREAS, there are sufficient funds available for this purpose in the Information Technology Department's operating budget;

NOW, THEREFORE, the City Council of the City of Belmont resolves as follows:

SECTION 1. The City Manager is authorized to enter into a one year agreement with AT&T Business Solutions for an amount not to exceed \$14,879.

\* \* \*

ADOPTED May 13, 2014, by the City of Belmont City Council by the following vote:

Ayes:

Noes:

Absent:

Abstain:

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

## ORDER FOR INTERNET SERVICES

This Order for Internet Services (the “**Order**”) is made pursuant to that certain Master Services Agreement dated May 14, 2014 (the “**Master Agreement**”) between ASTOUND BROADBAND, LLC (“**Provider**”) and the CITY OF BELMONT (“**Customer**”). This Order is dated as of the date which appears on the signature page of this Order. All capitalized terms not defined herein have the meanings that are ascribed in the Master Agreement.

In accordance with the Master Agreement, the terms and conditions of which are incorporated herein by this reference, Provider and Customer agree as follows:

### CUSTOMER INFORMATION:

Account Name: City of Belmont  
Invoicing Address: One Twin Pines Lane, Suite 320, Belmont, CA 94002  
Account Executive to Customer: Amos Munoz  
Customer Federal Tax ID#: 94-6000296

**Customer Contact Information.** To facilitate communication the following information is provided as a convenience and may be updated at any time without affecting the enforceability of the terms and conditions herein:

	Billing Contact	Site Contact	Technical Contact
Name	Priscilla Doyle	Bill Mitchell	Marisa Martinez
Phone	650-595-7423	650-637-2970	650-637-2969
Fax			
Cell			
Email Address	<a href="mailto:pdoyle@belmont.gov">pdoyle@belmont.gov</a>	<a href="mailto:bmitchell@belmont.gov">bmitchell@belmont.gov</a>	<a href="mailto:mmartinez@belmont.gov">mmartinez@belmont.gov</a>

**INSTALL DATE:** Approximately 40 - 70 days from Order Date

**INITIAL SERVICE TERM:** 60 Months

### SITE-SPECIFIC INFORMATION:

Service Site (Address): 1 Twin Pines Ln, Belmont, CA 94002  
Service Site Name (*for identification purposes*): City of Belmont Permit Center

RECURRING MONTHLY SERVICE FEES:	
<b>Dedicated Hi Speed Business Class Internet (IP) Service (Access and Service on Fiber)</b> 100 Mbps Dedicated Internet Access, including 30 IP addresses, delivered to Service Site	\$700.00
<b>TOTAL RECURRING MONTHLY SERVICE FEES:</b>	<b>\$700.00</b>

ONE-TIME CHARGES:	
Installation of the above-mentioned Services.	Waived
<b>TOTAL ONE-TIME CHARGES:</b>	<b>\$0</b>

**1 Service.** Provider shall provide the Internet Services indicated above to Customer at the Service Site identified above (the “**Services**”).

**2 Service Term.** The initial term of this Order begins on the Install Date identified above and continues for the Initial Service Term indicated above. On expiration of the Initial Service Term, this Order will automatically renew for

successive one-year renewal terms unless either party terminates the Order by giving written notice to the other party not less than 30 days prior to the end of the Initial Service Term or the then current renewal term. The period of time this Order is in effect is referred to as the “**Service Term.**”

**3 IP Service.** In addition to the other provisions of this Order and the Master Agreement, continued use of the Services is subject to the following terms and conditions:

(a) Equipment and Software Requirements. Customer shall maintain certain minimum Equipment and software, as Provider may determine, to receive the Services.

(b) Access and Use. Customer shall ensure that any person who has access to the Services through Customer's computer(s), Service Site, facilities or account shall comply with the terms of this Order. Customer is responsible for all charges incurred and all conduct, whether authorized or unauthorized, caused by use of Customer's computers, service locations, facilities or account using the Services.

(c) Customer Security Responsibilities. Customer is responsible for the implementation of reasonable security procedures and standards. Provider may temporarily discontinue or disconnect the Services on learning of a breach of security and shall attempt to contact Customer in advance of such discontinuation or disconnection, if possible. The temporary discontinuation or disconnection of the IP Services will not constitute a breach of this Order.

(d) Electronic Addresses. All e-mail addresses, e-mail account names, and IP addresses ("**Electronic Addresses**") provided by Provider are and will remain the property of Provider. Customer shall not alter, modify, sell, lease, assign, encumber or otherwise tamper with the Electronic Addresses.

(e) No Liability for Changes of Address. Due to growth, acquisitions and changes in technology, Provider reserves the right to change addressing schemes, including Electronic Addresses.

(f) No Liability for Risks of Internet Use. The Internet is a shared network and Provider does not warrant that the Services will be error free. The Services, Provider's Network and the Internet are not secure, and others may access or monitor Customer's traffic. Provider does not warrant that data or files Customer sends or receives over the Network will not be subject to unauthorized access by others, that other users will not gain access to the Customer's data, or that the data or files will be free from computer viruses or other harmful components. Provider has no responsibility and assumes no liability for such acts or occurrences.

(g) No Liability for Purchases. Through use of the Services, Customer may access certain information, products and services of others for which there is a charge. Customer is solely liable and responsible for all fees or charges for these online services, products or information. Provider has no responsibility to resolve disputes with other vendors.

(h) Blocking and Filtering. While the computer industry may provide blocking and filtering software that empowers Customer to monitor and restrict access to

Customer's computer and its data, Provider is not the publisher of this software. Provider strongly recommends that the Customer employ a "firewall" or other security software. Customer assumes all responsibility for providing and configuring any "firewall" or security measures for use with the Service. Provider is not responsible in any manner for the effectiveness of these blocking and filtering technologies. Provider does not warrant that other users will be unable to gain access to Customer's computer(s) and/or data even if the Customer utilizes blocking and filtering technologies.

(i) Domain Names. Customer is solely responsible for registering for or renewing a desired domain name, Provider disclaims such responsibility, and Customer acknowledges that Provider does not guarantee that Customer will be able to register or renew a desired domain name, even if an inquiry indicates that domain name is available at the time of such inquiry.

**4 Performance.** Provider shall use commercially reasonable efforts in keeping with normal industry standards to ensure that the Services are available to Customer 24 hours per day, seven days per week. It is possible, however, that there will be interruptions of Services. Specifically, Customer understands and agrees that the Services may be unavailable from time to time either for scheduled or unscheduled maintenance, technical difficulties, or for other reasons beyond Provider's reasonable control. Temporary service interruptions/outages for such reasons, as well as service interruptions/outages caused by the Customer, its agents and employees, or by a Force Majeure Event, will not constitute failures by Provider to perform its obligations under this Order, and Customer will not hold Provider at fault for loss of Customer revenue or lost employee productivity due to such Services outages.

**5 Limitation of Liability.** In addition to the provisions of article 5 of the Master Agreement:

(a) Customer acknowledges that any content that Customer may access or transmit through any Services is provided by independent content providers, over which Provider does not exercise and disclaims any control. Provider neither previews content nor exercises editorial control, does not endorse any opinions or information accessed through any Services, and assumes no responsibility for content. Provider specifically disclaims any responsibility for the accuracy or quality of the information obtained using the Services. Such content or programs may include, without limitation, programs or content of an infringing, abusive, profane or sexually offensive nature. Customer and authorized users accessing other parties' content through Customer's facilities do so at Customer's own risk, and Provider assumes no liability whatsoever for any claims,



losses, actions, damages, suits or proceedings arising out of or otherwise relating to such content.

(b) Customer agrees that Customer uses the Services and Equipment supplied by Provider at its sole risk. Provider does not manufacture the Equipment, and the Services and Equipment are provided on an "as is basis" without warranties of any kind.

(c) Provider assumes no responsibility whatsoever for any damage to or loss or destruction of any of Customer's hardware, software, files, data or peripherals which may result from Customer's use of any Services or from the installation, maintenance or removal of any Services, Network, or related Equipment or software. Provider does not warrant that data or files sent by or to Customer will be transmitted in uncorrupted form or within a reasonable period of time.

(d) Customer is responsible for the installation, repair and use of Customer-supplied third-party hardware and/or software. Provider does not support third-party hardware or software supplied by Customer. Any questions concerning third-party hardware or software should be directed to the provider of that product. Provider assumes no liability or responsibility for the installation, maintenance, compatibility or performance of third-party software, any Customer-supplied hardware or software with the Services. If such third-party equipment or software impairs the Services, Customer will remain liable for payments as agreed (if any) without recourse for credit or prorated refund for the period of impairment. Provider has no responsibility to resolve any difficulties caused by such third-party equipment or software. If, at Customer's request, Provider attempts to resolve difficulties caused by such third-party equipment or software, such efforts will be performed at Provider's discretion and at Provider's then-current commercial rates and terms.

(e) If Customer chooses to run or offer access to applications from its equipment that permits others to gain access through the Network, Customer must take appropriate security measures. Failing to do so may cause immediate termination of the Services and this Order by Provider without Provider incurring liability. Provider is not responsible for and assumes no liability for any damages resulting from the use of such applications, and Customer shall hold Provider harmless from and indemnify Provider against any claims, losses, or damages arising from such use. Provider is not responsible and assumes no liability for losses, claims, damages, expenses, liability, or costs resulting from others accessing the Customer's computers, its internal network and/or the Network through Customer's equipment, and Customer shall hold Provider harmless from and indemnify Provider against any such claims, losses, or damages to the full extent arising from such access.

## **6      General Customer Representations and Obligations.**

In addition to any representations and obligations in the Master Agreement, Customer is responsible for all access to and use of the Services by means of Customer's equipment, whether or not Customer has knowledge of or authorizes such access or use. Customer will be solely liable and responsible for all charges incurred and all conduct through either authorized or unauthorized use of the Services, until Customer informs Provider of any breach of security. Provider expressly prohibits using the Services for the posting or transferring of sexually explicit images, material inappropriate for minors, or other offensive materials. By signing below, Customer expressly acknowledges that Customer shall not post or transfer or permit others to post or transfer such materials using the Services.

This Order will become effective when all parties have signed it. The date this Order is signed by the last party to sign it (as indicated by the date associated with that party's signature) will be deemed the date of this Order.

### Customer:

CITY OF BELMONT

By: \_\_\_\_\_

Name Printed: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

### Provider:

ASTOUND BROADBAND, LLC

By: \_\_\_\_\_

Name Printed: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBIT A

### Service Level Agreement

#### I. Overview

This Exhibit A Service Level Agreement (SLA) applies to Service orders (Service) for customers that use the Point-To-Point Fiber-based Ethernet Transport Services provided by Provider. This SLA describes the standards, rights and remedies regarding the performance of the Network in the provision of Service to Customer as defined in the Order. This SLA only applies to fiber based customers with point to point or Internet based services.

#### II. Network Scope (Point to Point)

The scope of the Network includes any and all Provider controlled equipment between and inclusive of those Provider devices closest to the Customer Provided Equipment (CPE) that provide a demarcation point between the Customer network and the Network, *e.g.*, a Cisco switch. A demarcation point is defined as the Ethernet switched infrastructure and/or optical infrastructure residing in a Provider Point of Presence (PoP) on the Network and under the direct control of Provider or its circuit partner(s). The Network, as it applies to this document and all rights and remedies herein, does not include any third party equipment, other than equipment furnished by Provider or its circuit partner(s), any physical cross connections between Customer and Provider or any Customer application riding on the Network unless specifically noted within the contract for Services entered into between Customer and Provider.

#### III. Network Service Standards and Performance (Point to Point)

**Network Availability:** Provider guarantees within the rights and limits of this SLA that the Network will be available to the Customer 99.99 percent of the time as measured on a monthly basis. 99.99 percent uptime is defined as a period or periods of Network outage of duration not to exceed 4.32 minutes in any given month. A Network outage is calculated from the time Service becomes unavailable to the time Service is restored as verified by Provider or its circuit partner(s)'s monitoring systems and based on the availability of Service during the Service monthly billing period in which the Customer opens a trouble ticket with the Network operations center regarding the Network outage.

**Latency:** Provider guarantees within the rights and limits of this SLA that the average round-trip latency on the Network will not exceed 50 milliseconds for a period of three samples by Provider's Network monitoring facilities, or for a continuous 20 minute period, whichever is less. Average round-trip latency, with respect to a given month, is defined as the average time required for a round-trip frame transfer between PoPs on the Network during that month as measured by Provider. Average round-trip latency does not extend past the demarcation between the CPE and the Provider demarcation point.

**Packet Loss:** Point to Point packet loss on the Network will be no more than 1%, or current industry standard, whichever is less.

**Mean Time to Repair:** Provider's Mean Time to Repair (MTTR) goal for any Service is two hours. However, Customer acknowledges that MTTR may exceed this amount in cases of major damage to the Network such as fiber cuts. MTTR commences after the Customer, Provider, or one of its Network circuit partners opens a trouble ticket with the Wave Business Solutions Network NOC at <888-317-0488>. MTTR is defined as the time required to restore the Network to a normally operating state. MTTR is calculated on a monthly average of the time taken to repair all trouble tickets on a specific circuit with the same severity level during a Network outage. The cumulative length of Network outages per circuit is divided by the number of trouble tickets in the billing month to gather the monthly MTTR per circuit.

#### IV. Internet Access Service

If the contracted service includes internet, the following performance criteria and responsibilities are incorporated in the SLA:

- Minimum ordered bandwidth is guaranteed or service charge is pro-rated;
- Guaranteed passing of all ports/protocol;

- Filter and reroute on-demand to mitigate DOS and DDOS attacks;
- Each full hour of downtime entitles Customer to one-half-day Service credit, with a maximum credit of two-half-days per day of interrupted service with no carry-forward; downtime is defined as an inoperative Provider- or circuit partner(s)-controlled circuit impeding access to a third-party circuit provider transporting over the Internet

## **V. Credits**

All customer credits are based on a monthly billing cycle. Credits for Network non-compliance will be credited to the Customer's account within two billing cycles. No credit will exceed the monthly value for the billing month of the affected circuit/service address exclusive of any applicable taxes charged to Customer or collected by Provider. In the event that Provider is unable to satisfy the Network Service standards and performance guarantees as defined in the SLA, the following credits apply:

- Network unavailability per incident 20-percent of MRC;
- Latency greater than 50-milliseconds, per incident 10-percent of MRC;
- MTTR 2 hours per month 25-percent of MRC.
- Packet Loss greater than 1-percent, per incident 10-percent of MRC;

Note: where there are multiple simultaneous performance "failures," the performance penalty metric yielding the highest dollar credit will be the only one to be applied to the Customer's account and it shall never exceed the net monthly balance of charges for that particular circuit for the month in which the failure has occurred.

## **VI. Credit Request**

Provider's contact listed in the Order is the only authorized medium to report perceived SLA noncompliance events. In order to receive credits, Customer must inform the Provider in writing, which will in turn open a ticket with the NOC within the time limits as listed in this section of this SLA. If the Customer does not open a trouble ticket or does not open a trouble ticket within the prescribed time, Customer will not be able to receive a credit. A list of prescribed times according to the Network standards in Section III of this document are below:

### **Network Standard Measurement**

Network availability trouble ticket must be opened within two hours of the occurrence in order to request credits or other remedies as they relate to this document. Latency trouble ticket must be opened within two hours of the occurrence in order to request credits or other remedies as they relate to this SLA. MTTR trouble ticket must be opened before the end of the billing cycle, defined as the date of the 26th of any given month. In addition to the trouble ticket requirements as listed in the section of the SLA, request for credit must be made in writing to Provider within five days of opening the trouble ticket. The request for credit must include the trouble ticket number, applicable circuit IDs or account number, and relevant information regarding the scope of the occurrence as it relates to the rights and remedies as specified within this SLA. Requests for credit must be made to Provider's listed contact. Provider will provide a formal response to the Customer's request for SLA credits within 10 working days of receipt of such request.

## **VII. Exceptions**

All Network Service standards and performance guarantees do not include periods of Service interruption of or on the Network caused in whole or in part by:

- ✓ Reasons of force majeure as defined in the applicable Order;
- ✓ Customer's or Customer's agent's acts or omissions including without limitation, any negligence, willful misconduct or use of the Network or Provider services in breach of the applicable Order by Customer or others authorized by Customer;
- ✓ Provider OR Customer scheduled maintenance;
- ✓ Failure of circuits beyond the demarcation point or points on the Network, unless such failure is caused solely by Provider;

- ✓ Service outage attributable to the installation of a new circuit where a new circuit is defined as a circuit over which Service may be active but a signed Order acceptance document has not been received and duly noted by an assigned agent of Provider;
- ✓ Circumstances beyond Provider's reasonable control, including, without limitation, acts of any governmental body, war, insurrection, sabotage, embargo, fire, flood, strike, or other labor disturbance, interruption of or delay in transportation, unavailability of or interruption or delay in telecommunications or third party Services, failure of third party software or inability to obtain raw materials, supplies, or power used in or equipment needed for provision of the SLA.

### **VIII. Trouble Ticket ... Escalation**

A Customer-initiated trouble ticket is to be routed through the Network Operations Center at <888-317-0488>. Should Customer believe that fault lies on the Network, it shall call the NOC (staffed 24x7x365), identifying the circuit in question by its unique circuit ID or account billing code number. The NOC will open a trouble ticket and seek resolution as expeditiously as possible. Closing of the ticket will be affected with a telephone call back to Customer. In the event that a trouble ticket remains open or unresolved for an unexpectedly long period of time, Customer, at its sole discretion, can contact the Network NOC and ask for an escalation.

### **Maintenance and Outages**

Customer to be notified one week in advance of scheduled outages that will take part or all of its circuits off-line. All efforts will be expended to perform such work off-hours. In the event of unscheduled outages, Provider will notify the Customer as expeditiously as possible and, if necessary, be on-site within two hours, regardless of location, to effect necessary repairs to return circuit to normal operating status.

### **Trouble Calls and Maintenance**

Demand Maintenance/Service and Repair - Provider response to Network problems shall occur at all hours (24 x 365). If Provider is to provide maintenance/service or repair on Network facilities located within Customer premises; Provider must have reasonable access to such facilities on a 24/365 basis. This shall include response to all situations creating problems on the network, regardless of whether they originate within the network or within equipment or software at the customer site. Appropriate Provider technical support shall respond and actively begin working on Network problems within 30 minutes of either 1) Provider NOC identifying such problem, or 2) Provider receiving a call from Customer reporting a Network problem. Provider shall place a phone call to Customer's designated service contact to inform Customer that the situation is being addressed. Provider shall work continuously until the problem is resolved. If it is determined by Provider that the Network problem is caused by Customer equipment or software, then Customer shall correct the problem promptly, such that the integrity of the Network provided by Provider is not adversely affected. If Customer does not correct the problem, then Provider may, at its sole discretion, disconnect the affected Customer site from the Network until such time that the Customer equipment or software is repaired or readjusted. If Customer desires assistance from Provider in correcting the equipment or software problem, then Provider shall provide such assistance, but Provider shall also have the right to invoice Customer, at Provider's prevailing hourly rate for the time spent correcting Customer equipment or software problems.

## MASTER SERVICES AGREEMENT

This Master Services Agreement (“**MSA**”) is entered into as of May 14, 2014 (“**Effective Date**”) by and between ASTOUND BROADBAND, LLC (“**Provider**”) and the CITY OF BELMONT (“**Customer**”). Provider and its affiliates provide various facilities-based telecommunications, competitive local exchange and related services (collectively, “**Provider Affiliates**”). This MSA sets forth the general terms and conditions applicable to Customer’s purchase, from time to time, of certain communications and related services (“**Services**”). Customer acknowledges that Services may be provided by a Provider Affiliate or a third-party service provider selected by Provider, but Provider will remain responsible to Customer for the delivery and performance of the Services as set forth in the applicable Order.

### ARTICLE 1. ORDERS FOR AND PROVISION OF SERVICE

**1.1 Submission and Acceptance of Orders.** This MSA is not an agreement to purchase or commitment to provide Services. Customer may, from time to time, request Provider provide certain Services by submitting a separate order, in a form provided by Provider (each, an “**Order**”). Each Order will set forth the specific terms and conditions that apply to the applicable Services, and shall incorporate by reference, and be subject to, the terms of this MSA. Additional terms and conditions that apply to each type of Service (e.g., Internet, data transport, or telephone services) shall be set forth in Provider’s standard form of Service Level Agreement for such Service, which shall be included with and constitute an integral part of each Order. Customer shall be responsible for providing complete and accurate information on each Order, which shall include all information requested by Provider for provision of the Services, including Customer’s requested duration for Services (“**Service Term**”). Each Order shall be subject to acceptance by Provider, in its sole discretion, which will be the earlier to occur of (i) Provider delivering written notice to Customer of the date by which Provider shall endeavor to install Services (the “**Install Date**”) or (ii) Provider commencing provision of the Services.

**1.2 Order of Precedence.** Upon acceptance of an Order by Provider, such Order will become part of this MSA, and this MSA and all accepted Orders are collectively referred to as the “**Agreement**.” In the event of a conflict between the provisions of this MSA and those of an Order, the provisions of this MSA shall prevail unless the applicable Order clearly and conspicuously states that such conflicting term or condition is intended to supersede and replace the terms and conditions of this MSA.

### ARTICLE 2. BILLING AND PAYMENT

**2.1 Commencement of Billing.** Provider shall deliver written notice (a “**Connection Notice**”) stating when Services were installed either as part of Customer’s first invoice for particular Services or in a separate notification. If Customer notifies Provider earlier than three days after delivery of the Connection Notice that Services are not functioning properly, Provider shall correct any deficiencies and, on Customer’s request, credit Customer’s account in the amount of 1/30 of the applicable MRC for each day the Services did not function properly.

**2.2 Payment of Invoices and Disputes.**

(A) Customer shall be responsible for payment for Services in accordance with the applicable Order, including all recurring and non-recurring fees, usage-based fees and other amounts payable to Provider by Customer (collectively, the “**Fees**”). Fixed Fees are billed in advance and usage-based Fees are billed in arrears. Generally, unless otherwise provided in an Order, invoices will be sent to Customer within 30 days of the implementation of the applicable Services for fixed Fees and within 30 days of the conclusion of the month for which recurring or usage-based Fees are assessed. All amounts due to Provider are payable in full within 30 days after the invoice date (“**Due Date**”). Past due amounts bear interest at 1.5% per month or the highest rate allowed by law (whichever is less). Acceptance of any such interest charges paid by Customer will not constitute a waiver by Provider of any Customer Default (as defined below) with respect to any such overdue amount. Provider’s failure to submit an invoice will not relieve Customer of its obligation to pay all amounts owed when due. Customer is responsible for all Fees with respect to the Services, even if incurred as the result of unauthorized use.

(B) If Customer in good faith disputes any Fees or other charges invoiced by Provider, Customer shall promptly pay all undisputed charges and shall notify Provider in writing of any such disputed amounts within 90 days after the invoice date, identifying in reasonable detail its reasons for the dispute and the nature and amount of the dispute. All amounts not timely and appropriately disputed within 90 days after the invoice date shall be deemed final, not subject to further dispute, and immediately payable in full with interest from the Due Date. The parties shall use all reasonable efforts to resolve such dispute promptly and, in any event, within 30 days after Customer provides written notification of such dispute to Provider. If the dispute is not resolved within such 30-day period, Customer and Provider must promptly submit the dispute to a senior executive officer (vice president or above) of each party, who shall negotiate in good faith to resolve the dispute within 14 days after its submission. If such officers are unable to reach agreement to the satisfaction of each party within such 14-day period, Provider will have the right to terminate the applicable Order under which such dispute arose, in addition to any other right or remedy under this Agreement. If a disputed amount is determined to be a legitimate charge, Customer shall pay such amount within 15 days of such determination. If a disputed amount is determined to be billed in error, a credit for the amount billed incorrectly will be made to the next invoice.

(C) Billing for partial months is prorated. The first billing cycle may include a partial month's recurring fee and a full month's recurring fee if Provider provides Services for a partial month.

(D) Provider may charge a reasonable service fee for all returned checks and bankcard, credit card or other charge card charge-backs.

(E) Customer will be responsible for all expenses, including reasonable attorneys' fees and collection costs, Provider incurs in collecting any unpaid amounts due under the Agreement.

**2.3 Taxes.** Customer is responsible for the determination, calculation, collection and payment of all taxes, surcharges and other fees (including FCC fees such as universal service fees, TRS, etc.) that may be imposed on Provider, any Provider Affiliate or Customer, arising in any jurisdiction, imposed on or incident to the provision, sale or use of Services, including but not limited to value added, consumption, sales, use, gross receipts, foreign withholding (which will be grossed up), excise, access, bypass, ad valorem, franchise or other taxes, fees, duties or surcharges (including regulatory and 911 surcharges) (collectively "**Taxes**"). Taxes shall not include Provider's taxes based on Provider's net income. Some Taxes are recovered through imposition of a percentage surcharge on the charges for Services. If either party is audited by a taxing authority or other governmental authority, the other party agrees to reasonably cooperate with the party being audited in order to respond to any audit inquiries in a proper and timely manner so that the audit or any resulting controversy may be resolved expeditiously. If Customer is entitled to an exemption from any Taxes, Customer is responsible for presenting Provider with a valid exemption or resale certificate as authorized or required by statute or regulation of the jurisdiction providing such resale or other exemption, and Provider will give effect thereto prospectively. If applicable law excludes or exempts a purchase of Services from Taxes but does not also provide an exemption procedure, then Customer is responsible for presenting Provider with a letter signed by a senior executive officer of Customer claiming an exemption and identifying the applicable law that both allows such exemption and does not require an exemption certificate. If subsequently it is determined that Customer is not exempt, Customer will defend, indemnify and hold Provider harmless from any and all costs, claims, Taxes, expenses (including reasonable attorneys' fees), and penalties levied by a taxing authority against Provider relative to Customer's lack of exempt status.

**2.4 Regulatory and Legal Changes.** If changes in applicable law, regulation, rule or order materially affect delivery of Services, the parties shall negotiate in good faith appropriate changes to any applicable Order. If the parties cannot reach agreement within 30 days after Provider's notice requesting renegotiation: (A) Provider may, on a prospective basis after such 30 day-period, pass any increased delivery costs on to Customer, and (B) if Provider does so, Customer may terminate the affected Services on written notice to Provider delivered within 30 days of the increased costs.

## ARTICLE 3. TERM

**3.1 MSA Term.** This MSA shall be in effect for a period of three years from the Effective Date, unless terminated earlier as provided in this MSA, and shall automatically renew for successive terms of one-year unless written notice of non-renewal is provided by either party 90 days prior to expiration of the initial term or any renewal term. Notwithstanding the foregoing, in the event any Order remains in effect following termination or non-renewal of this MSA, this MSA shall govern and continue in effect with regard to such Order until the termination or non-renewal of such Order.

**3.2 Order Term.** Unless expressly stated otherwise in the applicable Order, at the expiration of the Service Term, Services will automatically continue for successive terms of one-year (each, a “**Renewal Term**”), unless written notice of non-renewal is provided by either party 90 days prior to expiration of the Service Term or Renewal Term. Provider may increase the rates and charges for any Renewal Term upon 90 days’ prior written notice to Customer. In addition, Customer shall pay Provider’s then-current rates and charges for moves, adds or changes agreed to by Provider with respect to any Order or Services.

## ARTICLE 4. TERMINATION OR SUSPENSION OF SERVICE

**4.1 Order Cancellation Prior to Install Date.** No later than 10 days prior to the Install Date with respect to any Order, Customer may cancel such Order by providing notice to Provider both (i) by email to [disconnects@wavebroadband.com](mailto:disconnects@wavebroadband.com) and (ii) by written notice pursuant to Section 8.3. Customer shall not incur any liability or charges for such cancelled Order other than (a) such reasonable costs incurred by Provider prior to cancellation to design, engineer and install the Services and (b) any cancellation or termination charges for which Provider becomes liable to any third party in an effort to provide the Services. Provider will use its commercially reasonable efforts to mitigate any such third-party cancellation or termination charges.

**4.2 Order Termination for Customer Convenience.** Customer may discontinue any Services and terminate any Order upon not less than 30 days’ notice to Provider both (i) by email to [disconnects@wavebroadband.com](mailto:disconnects@wavebroadband.com) and (ii) by written notice pursuant to Section 8.3 (“**Termination for Customer Convenience**”).

### **4.3 Termination or Suspension for Customer Default.**

(A) Customer will be in default under the Agreement (“**Customer Default**”) upon the occurrence of any the following (each, a separate Customer Default): (i) Customer fails to pay any amount required under the Agreement within five days of its due date; (ii) Customer breaches any material term of the Agreement and, if curable, Customer fails to correct such breach within 30 days of receipt of written notice from Provider identifying with reasonable particularity the nature of the breach; (iii) Customer files or initiates proceedings or has proceedings filed or initiated against it seeking liquidation, reorganization or other relief (such as appointment of a trustee, receiver, liquidator, custodian or such other official) under any bankruptcy, insolvency or other similar law and such proceedings are not dismissed within 60 days; or (iv) Provider reasonably determines that the use of Services by Customer or any end-user of Customer is resulting or will result in significant damage to Provider’s network or property or create a significant risk of harm to Provider or its employees or representatives.

(B) In the event of Customer Default, Provider may, at its option, and in addition to any other remedies it may have at law or in equity, take any or all of the following actions: (i) immediately suspend any or all Services until such time as the Customer Default has been corrected (provided, however, that any suspension shall not relieve Customer’s on-going obligation to pay Provider all Fees and other amounts due under the Agreement, as if such suspension of Services had not taken place); (ii) terminate any or all Services or Orders; or (iii) after the occurrence of any two Customer Defaults in any 12 month period, or after the occurrence of any Customer Default pursuant to subsection (A)(iii) above, terminate this MSA.

(C) Customer hereby forever waives, releases and discharges Provider and its affiliates from any and all claims, demands, actions, damages and causes of action related in any way to, or arising out of, any suspension or termination in accordance with this Section 4.3.

#### **4.4 Termination for Provider Default.**

(A) Provider will be in default under the Agreement (“**Provider Default**”) upon the occurrence of any of the following (each, a separate event of Provider Default): (i) Provider substantially breaches any material term of the Agreement and Provider fails to correct each such noncompliance within 30 days of receipt of written notice from Customer identifying with reasonable particularity the nature of the breach; or (ii) Provider files or initiates proceedings or has proceedings filed or initiated against it seeking liquidation, reorganization or other relief (such as appointment of a trustee, receiver, liquidator, custodian or such other official) under any bankruptcy, insolvency or other similar law and such proceedings are not dismissed within 60 days.

(B) In the event of Provider Default, Customer’s sole and exclusive remedies will be (i) termination of any applicable Services and Order and (ii) reimbursement by Provider of any pre-paid, unused monthly service Fees attributable to such terminated Services or Order.

**4.5 Other Termination by Provider.** Provider may terminate any Services or Order without incurring further liability hereunder, at any time during the Service Term, upon reasonable notice to Customer if Provider, in its reasonable discretion, determines that: (i) Provider’s installation or provision of Services is resulting or will result in significant damage to Provider’s network or property or create a significant risk of harm to Provider or its employees or representatives; (ii) Provider does not have all rights necessary to provide the Services or Provider is advised by counsel that termination of the Agreement is advisable given current or then-pending laws, regulations or ordinances, whether federal, state or local; (iii) Provider is legally or contractually prohibited from providing the Services; or (iv) delivery of the Services becomes technically infeasible due to equipment changes and reconfiguration or other technical issues. In the event of termination pursuant to this Section 4.5, Customer’s sole and exclusive remedies will be reimbursement by Provider of any pre-paid, unused monthly service Fees attributable to such terminated Services or Order.

**4.6 Termination Charges.** Customer shall pay a Termination Charge to Provider in the event of (a) Termination for Customer Convenience or (b) any termination for Customer Default. The “**Termination Charge**” shall equal the sum of: (1) all unpaid amounts for Services provided under the terminated Order, including any unpaid non-recurring Fees; plus (2) all non-recurring, disconnection or other third-party termination charges reasonably incurred by Provider or related to the termination of Services to Customer; plus (3) the sum of all remaining monthly recurring Fees and other charges payable for the remainder of the Service Term. Customer acknowledges that the calculation of the Termination Charge is a genuine estimate of Provider’s actual damages and is not a penalty. The Termination Charge will be due and payable within 15 days after the effective date of termination. In the event of termination due to Customer Default, payment of the Termination Charge shall not limit any of Provider’s others rights or remedies available to it at law or in equity.

**4.7 Substitution of Services.** At any time during the Agreement, Customer may elect to substitute new Services for then-existing Services. Provider will waive the Termination Charge associated with the termination of the then-existing Services, provided: (A) the Fees payable to Provider in connection with the substitute Services are equal to or greater than the Fees of the discontinued Services, (B) Customer commits to retain the substitute Services for the remainder of the Service Term for the discontinued Services, (C) Customer pays all applicable installation and other non-recurring charges, if any, for provision of the substitute Services, and (D) Customer reimburses Provider for all reasonable and documented engineering and construction costs associated with the discontinued Services, calculated on a time and materials basis, that have not already been recovered by Provider by the time of the substitution.

**4.8 Effect of Termination.** No termination pursuant to this Article 4 will relieve Customer of any of its obligations under the Agreement that are intended to continue. Further, each of the sections in Article 5 and Article 8 of this MSA will survive any termination or non-renewal of the Agreement.



## **ARTICLE 5. LIABILITIES AND INDEMNIFICATION**

**5.1 Limited Warranty.** At all times during the Service Term, Provider shall use commercially reasonable efforts, in keeping with normal industry standards, to cause the Services to be available to Customer. ***The foregoing limited warranty is exclusive and in lieu of all express and implied warranties whatsoever.*** Customer must make any warranty claim within 30 days after the occurrence of non-compliance with respect to the applicable Services. Unless expressly stated otherwise in the applicable Order, Provider's sole obligation and Customer's sole remedy with respect to any breach of the limited warranty set forth in this section is a prorated refund of the Fees paid by Customer based on the period of time when the Services are out of compliance with this limited warranty.

**5.2 Disclaimer of all other Warranties.** ***Provider makes no warranties or representations, express or implied, either in fact or by operation of law, statutory or otherwise, including warranties or merchantability, fitness for a particular purpose or title or non-infringement of third party rights, except those expressly set forth in the Agreement. No advice or information given by Provider, its affiliates or its contractors or their respective employees will create a warranty. If, under the applicable Order, Provider provides any Equipment in order to provide Services to Customer, Customer (i) shall pay for and accept all such Provider provided equipment "as is"; (ii) irrevocably and forever waives any right or claim it or any of its affiliates may now have or may hereafter acquire against Provider regarding such Equipment or the installation, maintenance, replacement or the use thereof; and (iii) shall look only to the warranty provided by the manufacturer of such Equipment for any issues, damages, problems or concerns that may arise in connection therewith. Notwithstanding the foregoing, if Customer discovers any material defect in any such Equipment within five days following delivery of the Equipment to Customer, and Customer does not cause such defect, Customer may return such Equipment to Provider. If Provider determines in its sole and absolute discretion that such returned Equipment contains a material defect not caused by Customer, Provider shall make commercially reasonable efforts to replace the defective Equipment at no additional cost to Customer except for any applicable shipping and handling costs associated with the return and replacement.***

**5.3 Limitation of Provider Liability.** ***Notwithstanding anything to the contrary herein, Provider's total cumulative liability to Customer under the Agreement is limited to the aggregate amount of Fees actually paid by Customer to Provider during the immediately preceding six months for the Service affected. Customer hereby irrevocably and forever releases Provider and its affiliates from all obligations, liability, claims or demands in excess of the foregoing limitation.***

**5.4 No Special Damages.** ***Without limiting any express provisions provided elsewhere in the Agreement, except for Customer's Indemnification obligations set forth in Section 5.5 of this MSA, neither party will be liable for any damages for lost profits, lost revenues, loss of goodwill, loss of anticipated savings, loss of data or cost of purchasing replacement services, or any indirect, incidental, special, consequential, exemplary or punitive damages arising out of the performance or failure to perform under the Agreement or, even if the party has been advised, knew or should have known of the possibility of such damages.***

### **5.5 Liability and Indemnification.**

(A) In addition to its specific indemnification responsibilities set forth elsewhere in the Agreement, Customer shall, at its own expense, indemnify, defend and hold harmless Provider, the Provider Affiliates and their respective members, managers, officers, employees, representatives and agents (the "**Provider Indemnified Parties**") against any and all claims, liabilities, lawsuits, damages, losses, judgments, settlements, costs, penalties, fees and expenses incurred by any Provider Indemnified Party, including but not limited to, reasonable attorneys' fees and court costs, to the full extent that such arise from (i) Customer's misrepresentation with regard to or noncompliance with the terms of the Agreement, (ii) Customer's failure to comply with applicable law, or (iii) Customer's negligence or willful misconduct. Provider Indemnified Parties will have the right but not the obligation to participate in the defense of the claim at Customer's cost and Customer shall cooperate with Provider Indemnified Parties in such case.

(B) Customer accepts full responsibility for all actions taken by its employees, contractors and agents for work performed on any property of Provider and for any Equipment used in connection with the Services, and Customer shall indemnify Provider Indemnified Parties from any actions of such employees, contractors and agents or arising from such Equipment.

(C) Provider accepts full responsibility for all actions taken by its employees, contractors or agents for work performed on any property of Customer and for any Provider-owned Equipment used in connection with the Services, and Provider shall indemnify Customer from any actions of such employees, contractors and agents or arising from such Provider-owned Equipment.

**5.6 Risk of Use of Services.** CUSTOMER ASSUMES ALL RESPONSIBILITY AND RISK FOR CUSTOMER'S AND ITS END USERS' USE OF ANY SERVICES PROVIDED BY PROVIDER. PROVIDER HAS NO CONTROL OVER AND EXPRESSLY DISCLAIMS ANY LIABILITY OR RESPONSIBILITY WHATSOEVER FOR THE CONTENT OF ANY INFORMATION TRANSMITTED OR RECEIVED THROUGH THE SERVICES, SERVICE INTERRUPTIONS ATTRIBUTABLE TO CUSTOMER'S NETWORK, ANY CUSTOMER EQUIPMENT FAILURES, OR ANY OTHER SUCH CAUSES, AND CUSTOMER AND CUSTOMER'S END USERS ACCESS THE SERVICES AT THEIR OWN RISK. CUSTOMER SHALL BE SOLELY RESPONSIBLE FOR THE SECURITY AND CONFIDENTIALITY OF INFORMATION IT TRANSMITS OR RECEIVES USING ANY SERVICES.

## **ARTICLE 6. EQUIPMENT, NETWORK, INSTALLATION AND SITE VISITS**

### **6.1 Equipment and Network; Title to Equipment.**

(A) **"Equipment"** means components including, but not limited to, any gateway or edge electronic device, antenna, node, concentrator, bridge, receiver, transmitter, transceiver, router, switch, hub or communications lines/cables, and software. **"Network"** means the network of Provider-provided Equipment, facilities and materials necessary to provide the Services.

(B) Unless expressly stated otherwise in the applicable Order, Customer is solely responsible for the acquisition, installation, maintenance and repair of any and all Equipment necessary to receive Services.

(C) Unless expressly stated otherwise in the applicable Order, if Provider provides Equipment, network facilities or other property in order to provide Services, title to all such Equipment, facilities and property shall remain solely and exclusively with Provider, and nothing in the Agreement will give or convey to Customer any right, title or interest whatsoever in any such Equipment, facilities or property. Customer shall not sell, lease, assign or create or permit to be created any liens, encumbrances or security interests on any Provider Equipment, and shall use its reasonable best efforts to promptly discharge any such lien, encumbrance or security interest. No Provider Equipment shall become fixtures of any Customer premises.

(D) Upon termination of any Order or Services, Customer, at its sole cost and expense, shall immediately (i) deliver or cause to be delivered to Provider all Provider-owned or Provider-controlled Equipment or other property located on any premises of Customer, in the condition in which they were received subject to ordinary wear and tear, and (ii) remove all Customer-owned or Customer-controlled Equipment or other property located on any premises of Provider. Failure of Customer to return all Provider Equipment within 10 days after Services are terminated will result in a charge to Customer's account equal to the full retail cost of replacement of the unreturned Equipment. In addition, Customer shall pay for the repair or replacement of any damaged Equipment (whether or not caused by Customer's negligent act, except for such repairs or replacements as may be necessary due to ordinary wear and tear or material/workmanship defects), together with any costs incurred by Provider in obtaining or attempting to regain possession of such Equipment, including, but not limited to, reasonable attorneys' fees.

**6.2 Customer Premises.** Customer is responsible, at its own expense, for all site preparation activities necessary for delivery and installation of the Equipment and the installation and ongoing provision of Services at such site (the “Service Site”). If access to non-Provider facilities is required for the installation, maintenance or removal of Provider Equipment, Customer shall, at its expense, secure such right of access and shall arrange for the provision and maintenance of electrical, HVAC or other utility service as needed for the proper installation and operation of such Equipment.

**6.3 Installation.**

(A) Provider may perform an installation review of each Service Site prior to installation of Services. Upon request, Customer shall provide Provider with accurate site or physical network diagrams or maps of a Service Site prior to installation. Provider may directly or through its agents inspect the Service Site before beginning installation, and reserves the right to satisfy itself that safe installation and proper operation of its Equipment and the Services are possible at the Service Site. If Provider determines, in its sole discretion, that safe installation or activation of one or more of the Services will have negative consequences to Provider’s personnel or Network or cause technical difficulties to Provider or its customers, Provider may terminate the applicable Order without liability upon written notice to Customer or may require Customer to correct the situation before proceeding with installation or activation of the Services.

(B) Provider shall schedule one or more installation visits with Customer. Customer’s authorized representative must be present during installation. During installation, Provider shall test to confirm that the Services can be accessed from the Service Site. If, during the course of installation, Provider determines additional work is necessary to enable Provider to deliver the Services to the Service Site, Provider shall notify Customer of any new or additional charges that may be necessary. If Customer does not agree to pay such charges by executing a revised Order reflecting such new charges (and superseding the underlying applicable Order) within five business days of receiving the revised Order, Customer or Provider may terminate the applicable Order. Customer will be responsible for access paths, moving or relocating furniture, furnishings, or equipment, or other preparation activities necessary for Provider to install, access and maintain the Services and Equipment. Customer is responsible for connecting Equipment to Customer’s computer or network to enable access to the Services. With respect to any excavation, Provider will be responsible for reasonable restoration efforts necessary to address any displacement resulting from such excavation.

**6.4 Interference.** If, during the Service Term of an Order, (i) proper operation of Provider’s Equipment or unhindered provision of the Services is no longer possible as a result of interference or obstruction caused by the acts or omissions of Customer, a third party or any force majeure event (as defined in Section 8.1), or (ii) Provider determines, in its sole discretion, such interference/obstruction or the cause thereof will have negative consequences to Provider’s personnel or Network or cause technical difficulties to Provider or its customers, Provider may terminate any affected Order(s) without liability upon written notice to Customer.

**6.5 Ongoing Visits; Repairs.**

(A) Provider may access the Service Site from time to time to inspect, construct, install, operate and maintain Provider’s Network facilities, Equipment or materials or any related facilities. Except in emergency situations, Provider shall obtain approval from Customer (not to be unreasonably withheld, conditioned or delayed) before entering the Service Site. At Provider’s request, Customer, or a representative designated by Customer, shall accompany Provider’s employees or agents into any unoccupied unit for the purpose of installing, repairing, maintaining, upgrading, or removing the Equipment.

(B) If Customer’s misuse, abuse or modification of the Services, Equipment or Network facilities supplied by Provider necessitates a visit to a Service Site for inspection, correction or repair, Provider may charge Customer a site visit fee as well as charges for any Equipment or Network repair or replacement necessary to restore Services.

**6.6 Scheduled Maintenance and Local Access.** Scheduled maintenance will not normally result in Services interruption. If scheduled maintenance requires Services interruption, Provider shall: (i) provide Customer reasonable advance notice; (ii) work with Customer to minimize such interruptions, and (iii) use commercially reasonable efforts to perform such maintenance between midnight and 6:00 a.m. local time.

**6.7 Equipment Maintenance.**

(A) Except as expressly otherwise provided in this MSA or an Order, neither party is responsible for the maintenance or repair of cable, electronics, structures, Equipment or materials owned by the other party, provided, however, that subject to the indemnification provisions of this MSA and the Order, each party will be responsible to the other for any physical damage or harm such party causes to the other party's personal or real property through the damage-causing party's negligence or willful misconduct.

(B) Customer shall (i) use its commercially reasonable efforts to safeguard Provider-provided Equipment; (ii) not add other equipment or move, modify, disturb, alter, remove, or otherwise tamper with any portion of the Equipment; (iii) not hire or permit anyone other than personnel authorized by Provider acting in their official capacities to perform any work on the Equipment; and (iv) not move or relocate Equipment to another location or use it at an address other than the Service Site(s) without the prior written consent of Provider.

(C) Any unauthorized connection or other tampering with the Services, Equipment, any system or its components will be cause for immediate (without opportunity to cure) disconnection of Services, termination of the Order and other legal and equitable relief, and Provider will be entitled to recover damages, including, but not limited to, the value of any Services and Equipment obtained in violation of the Order in addition to reasonable collection costs including, but not limited to, reasonable attorneys' fees. If any antenna or signal amplification system for use in connection with communication equipment hereafter installed on the Service Site interferes with the Services Provider provides under an Order, Provider will not be obligated to distribute a quality signal to the Service Site better than the highest quality which can be furnished as a result of such interference, until such time as the interference is eliminated or corrected by Customer or a third party.

**ARTICLE 7. REPRESENTATIONS AND OBLIGATIONS**

**7.1 Mutual Representations.** Each party represents to the other that

(A) (i) it has the power and legal authority to execute, deliver and carry out the terms of the Agreement, (ii) the execution and delivery of the Agreement and the performance of such parties' obligations hereunder have been duly authorized, (iii) the individual signing this MSA and any Order has the authority to do so; and (iv) the Agreement is a valid and legal agreement binding on such parties and enforceable in accordance with its terms.

(B) to the best of its knowledge and belief, it has all permits, licenses and authorizations that may be required under contract and applicable federal, state and local law, rules, regulations and ordinances to install, operate and maintain any Equipment used in connection with the Agreement, including without limitation, if applicable, the contractual right of entry to any properties on which any such Equipment is or will be located;

(C) to the best of its knowledge and belief, it is in material compliance with all laws, rules and regulations and court and governmental orders related to the operation of its business;

(D) it shall comply with all applicable laws and regulations when carrying out its respective duties under the Agreement; and

(E) it has not and shall not during the Service Term enter into an agreement or arrangement that could materially limit its performance or the fulfillment of its obligations under the Agreement.

**7.2 Customer Obligations.** Customer shall be responsible to ensure that any person who accesses or uses any Services, including through Customer's or Provider's Equipment, network or facilities, will be an authorized user, will use the Services and Equipment only in an appropriate and legal manner and will not interfere with or impair service over Provider's network or facilities. Customer shall not use or permit third parties to use the Services, including but not limited to any Equipment or software provided by Provider, for any illegal purpose, or to achieve unauthorized access to any computer systems, software, data, or other copyright or patent protected material. Customer shall be responsible for securing its network or facilities to prevent and protect against unauthorized access from third parties that may cause harm or damage to Provider's Equipment, network, vendors or customers. Customer shall not interfere with other customers' use of the Equipment or Services or disrupt the Provider Network, backbone, nodes or other Services. Customer shall not use or permit third parties to use Services in any manner that violates applicable law or causes Provider to violate applicable law. Violation of any part of this Section 7.2 is grounds for immediate (without opportunity to cure) termination of any Order in addition to any other rights or remedies Provider may have hereunder.

## **ARTICLE 8. GENERAL TERMS**

**8.1 Force Majeure.** Neither party will have any claim or right against the other for any failure of or delay in performance by the other party (other than Customer's payment obligations under Article 2) if the failure or delay is caused by or the result of any act of God, fire, flood, hurricane or other natural catastrophe, terrorist actions, vandalism, cable cut or other similar catastrophe, any law, order, regulation, direction or action of any governmental, civil or military authority, national emergency, insurrection, riot or war; inability to obtain equipment, material or other supplies, strike, lockout or other similar occurrence beyond the control and without the fault or negligence of the affected party. Notwithstanding the foregoing, if the force majeure delay exceeds 30 days, either party may terminate the Agreement or applicable Order immediately on written notice without incurring any liability hereunder.

**8.2 Assignment and Resale.**

(A) The parties' rights and obligations under the Agreement will bind and inure to the benefit of the parties and each of their respective permitted successors and assigns.

(B) Customer shall not assign, delegate or otherwise transfer the Agreement or its obligations, in whole or in part, whether by operation of law or otherwise, without the prior written consent of Provider, which will not be unreasonably withheld, delayed or conditioned. Any assignment will be contingent on the assignee or transferee agreeing in writing to assume and to perform all of Customer's obligations under the Agreement. Notwithstanding the foregoing, Customer may assign the Agreement to any parent, subsidiary or affiliate of Customer controlling, under the control of or under common control with Customer (a "**Customer Affiliate**"); provided, that Customer shall continue to remain liable for the obligations under the Agreement. If Customer transfers the Agreement, in whole or in part, to a Customer Affiliate or a Customer Affiliate otherwise purchases Services, Customer will be jointly and severally liable for all claims and liabilities related to Services ordered by any Customer Affiliate.

(C) Unless otherwise provided in an Order, Customer may use the Services in connection with goods or services provided by Customer to third parties ("**Customer Provided Services**") provided that Customer shall indemnify, defend and hold Provider and its affiliates harmless from any claims arising from or related to any Customer Provided Services. If Customer sells telecommunications services, Customer shall file all required documentation and at all times have the requisite authority with appropriate regulatory agencies respecting the same.

**8.3 Notices.** Any notice to be given to either party under the Agreement will be in writing and deemed received (A) when received, if hand delivered, (B) three days after being sent by certified mail, postage prepaid and return receipt requested, (C) when received, if sent by email or facsimile during the business hours of 9:00 a.m. to 5:00 p.m. (recipient's time) with confirmation of delivery, or (D) the next day, when sent by reliable, commercial overnight courier

providing receipt of service to a party at such party's address set forth below. Notice received after 5:00 p.m. (recipient's time) will be effective the next regular business day:

**If To Provider:**

Astound Broadband, LLC  
401 Kirkland Parkplace, Suite 500  
Kirkland, WA 98033  
Attn: Paul Koss  
Email: [pkoss@wavebroadband.com](mailto:pkoss@wavebroadband.com)

**If To Customer:**

CITY OF BELMONT  
One Twin Pines Lane, Suite 320  
Belmont, CA 94002  
Attn: Priscilla Doyle  
Email: [pdoyle@belmont.gov](mailto:pdoyle@belmont.gov)

**With A Copy To:**

WaveDivision Holdings, LLC  
401 Kirkland Parkplace, Suite 500  
Kirkland, WA 98033  
Attn: Jim Penney  
Email: [jpenney@wavebroadband.com](mailto:jpenney@wavebroadband.com)

For billing inquiries/disputes, requests for Service credits and/or requests for disconnection of Services (other than for default):

**If To Provider:**

Astound Broadband, LLC  
401 Kirkland Parkplace, Suite 500  
Kirkland, WA 98033  
Attn: Julie Caldwell  
Email: [jucaldwell@wavebroadband.com](mailto:jucaldwell@wavebroadband.com)

If no Customer address is provided above, notices may be provided to any electronic or physical address identified on any applicable Order. Either party may change its notice address by giving notice to the other party in accordance with this section.

#### **8.4 Business Services Subscriber Agreement and Privacy Policy.**

(A) Customer's use of Internet and Telephone Services shall comply with the term and conditions of Provider's Business Services Subscriber Agreement (the "**Subscriber Agreement**"), found at [www.wavebroadband.com](http://www.wavebroadband.com) (or the applicable successor URL) (and the Subscriber Agreement is hereby incorporated by reference into each applicable Orders). If Provider is providing Internet Services to Customer, Customer represents and warrants that Customer has read the Subscriber Agreement and agrees to be bound by its terms as they may from time to time be amended, revised, replaced, supplemented or otherwise changed. Customer expressly understands and agrees that Provider may update or modify the Subscriber Agreement from time to time, with or without notice to Customer. Provider may discontinue or disconnect Internet Services immediately for any violation of the Subscriber Agreement with or without notice to Customer.

(B) Provider treats private communications on or through its Network or using any Services as confidential and does not access, use or disclose the contents of private communications, except in limited circumstances and as permitted by law. Provider also maintains a Privacy Policy with respect to the Services in order to protect the privacy of its customers. The Privacy Policy can be found on Provider's website at [www.wavebroadband.com](http://www.wavebroadband.com) (or the applicable successor URL). Customer represents and warrants that Customer has read the Privacy Policy and agrees to be bound by its terms. Customer expressly understands and agrees that the Privacy Policy may be updated or modified from time to time by Provider, with or without notice to Customer.

**8.5 Intellectual Property and Publicity.** Nothing in the Agreement or its performance grants either party, by implication, estoppel or otherwise, any right, title, interest or license in or to the other party's names, logos, logotypes, trade dress, designs, or other trademarks, patents, patent applications, trade secrets, copyrights, mask work rights or other intellectual property rights of the other party or its affiliates.

**8.6 Confidential Information.** “**Confidential Information**” means the specific terms of the Agreement and any information, data or other materials provided by one party to the other under or in connection with the Agreement that is (A) clearly and conspicuously marked as “confidential” or with a similar designation; (B) identified by the disclosing party as confidential or proprietary before, during or promptly after presentation or communication; or (C) disclosed in a manner which the disclosing party reasonably communicated, or the receiving party should reasonably have understood under the circumstances, that the disclosure should be treated as confidential, whether or not the specific designation “confidential” or any similar designation is used. Except with the prior written consent of the disclosing party, the receiving party shall not (i) use or disclose any Confidential Information other than to employees and contractors who have a need to know the Confidential Information, with any disclosure only to contractors who have signed a non-disclosure agreement to protect the confidential information of third parties, or (ii) make copies or allow others to make copies of such Confidential Information except as is reasonably necessary for internal business purposes. Nothing in the Agreement prohibits or limits either party's use or disclosure of information (1) previously known to it without obligation of confidence; (2) independently developed by or for it without use of or access to the other party's Confidential Information; (3) acquired by it from a third party which is not under an obligation of confidence with respect to such information; (4) which is or becomes publicly available through no breach of the Agreement; or (5) is required to be disclosed by operation of law, court order or other governmental demand. The parties further acknowledge and agree that exposure to Confidential Information of disclosing party will inevitably enhance receiving party's knowledge and understanding of disclosing party's industry and business activities, including without limitation discoveries, ideas, concepts, know-how and techniques related to or used by disclosing party (collectively, “**General Knowledge**”) in a way that cannot be separated from Receiving Party's other industry and business related knowledge. Each party agrees that, without limiting the non-disclosure obligations under this Section, this Section shall not restrict a party's use of such General Knowledge for its own internal purposes so long as such use does not incorporate Confidential Information that is specific to the disclosing party. Neither party shall take any action, including intentional memorization of Confidential Information, with the intent or purpose of evading obligations contained in this Section. The parties acknowledge and agree that breach of this Section may cause irreparable injury for which monetary damages are not an adequate remedy. Accordingly, each party may seek injunctive relief and any other available equitable remedies to enforce the provisions of this Section, without posting a bond if otherwise required by law. Neither party shall issue any press release or other public statement relating to the Agreement, except as may be required by law or agreed between the parties in writing. Any non-disclosure agreement between the parties applicable to the Agreement supersedes this Section.

**8.7 Dispute Resolution by the Parties; Arbitration; Governing Law; Forum Selection.**

(A) The parties will use their reasonable efforts to resolve any dispute, claim or controversy (a “**Dispute**”) arising out of or relating to this Agreement through good faith negotiation in the spirit of mutual cooperation. Either party (“**Notifying Party**”) may give the other party (“**Noticed Party**”) written notice of a Dispute. Within 15 days after delivery of such notice, the Noticed Party will submit to the other a written response. The notice and the response will include (A) a statement of each party's position and a summary of arguments supporting that position, and (B) the names and titles of the persons representing each party who will participate in such discussions. Such persons shall include a senior level executive (vice president or above) who has authority to settle the Dispute. Within 15 days after delivery of the parties' respective positions and arguments the executives of both parties will confer at a mutually acceptable time and place to attempt to resolve the Dispute. Unless otherwise agreed in writing by the negotiating parties, the above-described negotiation shall end at the close of the first meeting of executives described above. Such closure shall not preclude continuing or later negotiation. All negotiations and documents exchanged pursuant to this section are confidential and inadmissible for any purpose, in any legal proceeding involving the parties; provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the

negotiation. If the parties are unable to resolve the Dispute through negotiation, then the Dispute may be submitted to the Seattle, Washington offices of Judicial Arbitration & Mediation Services, Inc. ("JAMS") or its successor for non-binding mediation in Seattle, Washington before a single mediator. The parties will cooperate with JAMS and with one another in selecting a mediator from the JAMS panel of neutrals and in scheduling the mediation proceedings. The parties agree that they will participate in the mediation in good faith and that they will share equally in its costs. Any dispute that cannot be resolved through mediation, and any dispute with respect to which a party is claiming equitable relief, shall be resolved by arbitration as provided in Section 8.7(B).

(B) Any Dispute not resolved as provided in Section 8.7(A), including whether a particular Dispute is arbitrable hereunder, or the performance, enforcement, breach, termination or validity of it, including the scope of the agreement to arbitrate, shall be finally resolved exclusively by submission to binding arbitration in accordance with this Section 8.7(B). Unresolved Disputes shall be submitted to arbitration regardless of the theory under which they arise, including without limitation contract, tort, common law, statutory, or federal or state regulatory law or administrative regulations. Any arbitration hearing shall be before a single neutral arbitrator and held in the Seattle, Washington office of JAMS. The arbitration shall be administered pursuant to the JAMS Comprehensive Rules and Procedures then in effect. The parties shall equally share the fees of the arbitrator. The Federal Arbitration Act, 9 U.S.C. §§ 1-15, not state law, shall govern the arbitrability of all disputes. The parties shall submit any documents requested by the arbitrator in advance of the hearing date specified by the arbitrator. The selected arbitrator may grant discovery as required by the reasonable needs of the case and determine motions filed (including motions for preliminary or ancillary relief and for summary disposition), but shall do so in accordance with the parties' desire to economically and quickly resolve any Dispute between them. As soon as practicable after the hearing, the arbitrator shall issue a written decision specifying such relief as may be appropriate. The arbitrator's award shall be final and non-appealable. Any award rendered shall be limited to actual damages sustained by the party in whose favor the judgment is rendered, subject to the limitation of damages in this MSA. The arbitrator may not award relief in excess of or inconsistent with the provisions of the Agreement, order consolidation or arbitration on a class-wide basis or award any damages other than the prevailing party's actual damages. The arbitrator's award shall be final and binding and may be enforced in solely in the courts provided in Section 8.7(C). Each party shall bear its own costs and attorneys' fees. A demand for arbitration shall be forever barred unless made within one year from the date when the alleged Dispute arose, and shall be made by written notice given to the other party as provided in Section 8.7(A). No party may act as a representative of other claimants or potential claimants in any dispute, and two or more individuals' disputes may not be consolidated or otherwise determined in one proceeding, without the prior written consent of both parties. The parties agree that the arbitration shall be kept confidential and the existence of the proceeding and any element of it (including, but not limited to, any pleadings, briefs or other documents submitted and exchanged, and testimony or other oral submission and any awards) shall not be disclosed beyond the arbitrator, the parties, their counsel and any person necessary to conduct the proceeding, except as may be ordered by a court of competent jurisdiction.

(C) The laws of the State of Washington govern all matters arising out of the Agreement. The state and federal courts located in King County, Washington will have exclusive jurisdiction and be the exclusive venue of any lawsuit between the parties arising out of this business relationship, including disputes when they arise following termination of the Agreement. Customer waives all defenses of lack of personal jurisdiction and forum non conveniens. Process may be served on either party in the manner authorized by applicable law or court rule. Customer acknowledges and agrees that this Section 8.7 serves as a material inducement for Provider to enter into the Agreement. ***Each party waives, to the fullest extent permitted by law, trial by jury of any disputes, claims or issues arising under the Agreement.***

**8.8 Further Actions.** The parties shall, at their own costs and expense, execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to carry out the intended purposes of the Agreement.

**8.9 Amendment.** The Agreement constitutes the entire and final agreement and understanding between the parties with respect to the Services and supersedes all prior agreements relating to the Services. The Agreement may only be modified or supplemented by an instrument executed by an authorized representative of each party.



**8.10 Waiver.** No failure by either party to enforce any rights hereunder will constitute a waiver of such rights. Provider's acceptance of any payment under the Agreement will not constitute an accord or any other form of acknowledgement or satisfaction that the amount paid is in fact the correct amount, and acceptance of a payment will not release any claim by Provider for additional amounts due from Customer. No express or implied waiver by Provider of any event of default will in any way be a waiver of any further subsequent event of default.

**8.11 Relationship.** The Agreement is a commercial contract between Provider and Customer and the relationship between the parties is that of independent contractors. Nothing in the Agreement creates any partnership, principal-agent, employer-employee or joint venture relationship between the parties or any of their affiliates, agents or employees for any purpose.

**8.12 Legal Expenses.** If any proceeding is brought by a party to enforce or interpret any term or provision of the Agreement, the substantially prevailing party in such proceeding will be entitled to recover, in addition to all other relief as set forth in the Agreement, that party's reasonable attorneys' and experts' fees and expenses.

**8.13 Severability.** The invalidity under applicable law of any provision of the Agreement will not affect the validity of any other provision of the Agreement, and if any provision herein is determined to be invalid or otherwise illegal, the Agreement will remain effective and will be construed in accordance with its terms as if the invalid or illegal provision were not contained herein.

**8.14 No Inference Against Author.** No provision of the Agreement will be interpreted against any party because the party or its legal representative drafted the provision.

**8.15 No Third Party Beneficiaries.** The Agreement is not intended and does not confer any rights or remedies on any entity or person other than Provider, the Provider Affiliates and Customer.

**8.16 Headings; Section and Article References.** The article and section headings in this MSA are furnished for the convenience of the parties and are not to be considered in the construction or interpretation of the Agreement. All article and section references herein are to articles and sections of this MSA.

**8.17 Counterparts.** This MSA and any Order may be executed in several counterparts, each of which will be an original, but all of which will constitute one and the same instrument. Any executed documents sent via facsimile or portable document format (pdf) images will be considered originals.

The parties are signing this MSA as of the Effective Date.

CITY OF BELMONT

ASTOUND BROADBAND, LLC

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_



**Account Manager: Brett W Splittgerber BS037K@ATT.COM**

Quote expires within 30 days of being sent.

\* Gateway router for U-Verse including at no charge



### Letter of Authorization

Customer Entity ("Customer") City of Belmont	AT&T Corp. and Affiliates ("AT&T") <sup>1</sup>
Customer Contact Information Name: Bill Mitchell	AT&T Sales Contact Information Primary Sales Contact Name: Brett Splittgerber
Telephone : 650-637-2970 Fax: Email Address:bmitchell@belmont.gov City: Belmont State/Province: CA Country: USA Domestic/International Zip Code: 94002	AT&T Sales Contact Information: Street Address: 8401 Greenway BLVD City: Middleton State/Province: WI Country: USA Domestic/International Zip Code: 53562
Master Account Number	

- I authorize and appoint AT&T as my agent to take the steps necessary to switch providers, including to access records in the possession of AT&T or any other telephone/circuit service provider pertaining to my existing service and to handle all arrangements with the Local Exchange Company(s) (LEC) to change (or establish) AT&T Long Distance Service, 'Local Toll' Service, Local Service and International Service to (or with) AT&T. AT&T may, upon Customer's express authorization in each instance, offer such service for all telephone lines associated with the main Billed Telephone Number(s) (BTNs) in the attachment, and to issue instructions to and to otherwise deal with the LEC regarding the BTNs.
- It is understood that: Only one carrier may be designated for Long Distance Service on any individual telephone number. Only one carrier may be designated for 'Local Toll' Service on any individual telephone number. Only one carrier may be designated for Local Service on any individual telephone number. Only one carrier may be designated for International Service on any individual telephone number.
- I understand that I may be required to pay a one time charge per line to switch providers. If I later wish to return to my current service provider, I may be required to pay a reconnection charge to that company.

4. Customer Authorizes AT&T to Establish or Switch Services Checked to AT&T for the locations and/or the BTNs and Working Telephone Numbers (WTNs) listed in an attachment to this Authorization:	Long Distance (InterLATA Toll, including international outside of Hawaii)	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO
	Local Toll (IntraLATA Toll)	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO
	Local Exchange Service	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO
	Cellular	<input type="checkbox"/> YES	<input type="checkbox"/> NO
	International Service (For Hawaii Only)	<input type="checkbox"/> YES	<input type="checkbox"/> NO
5. Customer's authorization is applicable to the locations or to the BTNs and WTNs listed in an attachment to this Authorization. AT&T will maintain a record of such locations, BTNs and WTNs as attached. If Customer has multi-lines or multi-locations and has executed a negotiated agreement(s) with AT&T under which Customer may add lines during the course of the term agreement, Customer may add Telephone Numbers without the need to submit a new LOA when those lines are added during the term period.		<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO

- This appointment revokes any prior appointments for the services involved here and may be revoked at any time and shall continue in force unless and until revoked by the customer. Signatory attests that he or she has reviewed the attachment to this Authorization, understands the above Letter of Authorization, is at least 18 years of age and is authorized to execute this Letter of Authorization on behalf of the Customer.

SUBSCRIBER: (Full Legal Business Name)	Mail or email to:
By: (Signature) (Customer completes)	Date:
Print Name:	Title EIN (TX)

<sup>1</sup> AT&T means AT&T Telco and/or AT&T LD and/or AT&T Corp. "AT&T Telco" means the applicable local telephone company subsidiary of AT&T Inc. serving the area location associated with the telephone number(s) at issue: Southwestern Bell Telephone Company d/b/a AT&T Arkansas, AT&T Kansas, AT&T Missouri, AT&T Oklahoma, or AT&T Texas; Pacific Bell Telephone Company d/b/a AT&T California; Nevada Bell Telephone Company d/b/a AT&T Nevada; Illinois Bell Telephone Company d/b/a AT&T Illinois; Indiana Bell Telephone Company, Incorporated d/b/a AT&T Indiana; Michigan Bell Telephone Company d/b/a AT&T Michigan; The Ohio Bell Telephone Company d/b/a AT&T Ohio; Wisconsin Bell, Inc. d/b/a AT&T Wisconsin; The Southern New England Telephone Company d/b/a AT&T Connecticut; BellSouth Telecommunications, Inc. doing business as one of the following AT&T Southeast, AT&T Alabama, AT&T Florida, AT&T Georgia, AT&T Kentucky, AT&T Louisiana, AT&T Mississippi, AT&T North Carolina, AT&T South Carolina, and AT&T Tennessee; AT&T Communications of the Southern States, LLC; TC Systems, Inc.; SBC Long Distance, LLC; or BellSouth Long Distance, Inc. "AT&T LD" means the applicable long distance company subsidiary of AT&T Inc.: TC Systems, Inc.; SNET America, Inc. d/b/a AT&T Long Distance East; SBC Long Distance, LLC d/b/a AT&T Long Distance; or BellSouth Long Distance, Inc. d/b/a AT&T Long Distance Service or BellSouth Long Distance Service, Inc.



**Letter of Authorization**  
List of Locations/Telephone Numbers

Customer Entity ("Customer") City of Belmont	AT&T Corp. and Affiliates ("AT&T")
Customer Contact Information Name: Bill Mitchell	AT&T Sales Contact Information Primary Sales Contact Name: Brett Splittgerber
Telephone : 650-637-2970 Fax: Email Address: bmittchell@belmont.gov City: Belmont State/Province: CA Country: USA Domestic/International Zip Code: 94002	AT&T Sales Contact Information: Street Address: 8401 Greenway BLVD City: Middleton State/Province: WI Country: USA Domestic/International Zip Code: 53562
Master Account Number	

<u>Location Addresses</u>				<u>List all BTN's and WTN's</u>
Number & Street: 2701 Cipriani BLVD ST: CA Zip: 94002	City: Belmont			650-508-2536
Number & Street: 1 Twin Pines Lane Zip: 94002	City: Belmont	ST: CA		650-508-4594
Number & Street: 1 Twin Pines Lane Zip: 94002	City: Belmont	ST: CA		650-508-4595
Number & Street: 1835 Belburn DR Zip: 94002	City: Belmont	ST: CA		650-590-2257
Number & Street: 1 Twin Pines Lane Zip: 94002	City: Belmont	ST: CA		650-593-2122
Number & Street: 1 Twin Pines Lane Zip: 94002	City: Belmont	ST: CA		650-593-2123
Number & Street: 1 Twin Pines Lane Zip: 94002	City: Belmont	ST: CA		650-595-7406
Number & Street: 1835 Belburn DR ST: CA Zip: 94002	City: Belmont			650-595-7447
Number & Street: 1835 Belburn DR Zip: 94002	City: Belmont	ST: CA		650-595-7448
Number & Street: 1 Twin Pines Lane Zip: 94002	City: Belmont	ST: CA		650-637-2921
Number & Street: 1 Twin Pines Lane Zip: 94002	City: Belmont	ST: CA		650-637-2984
Number & Street:	City:	ST:	Zip:	- -
Number & Street:	City:	ST:	Zip:	- -
Number & Street:	City:	ST:	Zip:	- -
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Number & Street:	City:	ST:	Zip:	-	-
Number & Street:	City:	ST:	Zip:	-	-



## TRANSFER OF SERVICE AGREEMENT

Current Customer:

City Of Belmont

New Customer:

Bill Mitchell

The Schedule ("Schedule") attached to this Transfer of Service Agreement ("Agreement") sets forth those agreements and other documents (collectively, the "Service Documents") and those service components ("Service Components") that Current Customer hereby assigns to New Customer. The Service Documents may include, among other things, standalone agreements, Service Order Attachments, Confirmations of Service Orders, Orders, Addenda and Pricing Schedules. By executing this Agreement, Current Customer, New Customer and AT&T (for purposes of this Agreement, "AT&T" means each of those affiliates and subsidiaries of AT&T, Inc. identified in the Service Documents or that is a provider of a Service Component) consent to Current Customer's assignment of the Service Documents and the Service Components to New Customer, and New Customer's assumption of all of the obligations contained in the Service Documents and all of the obligations relating to the Service Components, on the terms and conditions set forth below.

1. Current Customer is AT&T's existing customer of record for the Service Documents and the Service Components. **Current Customer understands that it will no longer be AT&T's customer for the Service Components or for the Services provided under the Service Documents after the applicable Effective Date(s) of the assignment of each of the Service Documents and Service Components. By assigning a Service Document, all Services provided under that Service Document shall be assigned by Current Customer to New Customer.**
2. New Customer assumes all of the obligations of Current Customer under the Service Documents and relating to the Service Components as of the applicable Effective Date(s) of the assignment of each of the Service Documents and Service Components. These obligations may include, among other things: all outstanding indebtedness under the Service Documents and relating to the Service Components; the unexpired portion of any term of service; usage and revenue commitments; and/or any applicable shortfall or termination liability (whether or not yet invoiced). New Customer understands that charges may apply, as specified by AT&T, for any re-arrangement, disconnection, installation or other change requested by New Customer relating to the Service Components and to the Services provided under the Service Documents. This assignment does not relieve or discharge Current Customer from liability for any assigned obligations, including but not limited to all past due indebtedness existing as of the applicable Effective Date(s) of the assignment of each of the Service Documents and the Service Components, and Current Customer and New Customer hereby acknowledge they are jointly and severally liable for such assigned obligations, including past due indebtedness.
3. Following the applicable Effective Date(s) of the assignment of the Service Documents, if the Service Documents are subject to Current Customer's Master Agreement, such Service Documents shall be subject to New Customer's Master Agreement.
4. Following the applicable Effective Date(s) of the assignment of the Service Components, New Customer's existing AT&T service agreement applicable to the Service Components shall govern the rights and obligations of the New Customer and AT&T with respect to the Service Components. If no such AT&T service agreement exists, then the rates, charges, terms and conditions in the applicable AT&T tariffs or if a Service Component is not offered pursuant to tariff, the AT&T Business Services Agreement (the "BSA") and the rates, charges, terms and conditions in the applicable portions of the appropriate AT&T Service Guide or Guidebook shall govern the rights and obligations of the New Customer and AT&T with respect to the Service Components following the applicable Effective Date. Tariffs, Service Guides, Guidebooks and the BSA can be found at [www.att.com/servicepublications](http://www.att.com/servicepublications).
5. The Service Documents and the Service Components shall be assigned effective on a date or dates (the "Effective Date(s)") established by AT&T. AT&T shall provide notice of Effective Date(s) to New Customer. AT&T shall determine the Effective Date(s) based upon: (a) the date(s) upon which the assignment can be effected operationally; (b) payment of all past due indebtedness; (c) the date of receipt of an original of this Agreement executed by authorized representatives of all parties; and (d) the receipt by AT&T of all required deposits, if any.
6. A signature received via facsimile shall be legally binding for all purposes.

Customer (Current) (by its authorized representative)	AT&T (by its authorized representative)
By:	By:
Printed or Typed Name:	Printed or Typed Name:
Title:	Title:
Date:	Date:

Customer (New) (by its authorized representative)
By:
Printed or Typed Name:
Title:
Date:

Deposit Requirements for New Customer
<input checked="checked" type="checkbox"/> No Deposit Required
<input type="checkbox"/> Yes \$ 0.00 Deposit Required



## TRANSFER OF SERVICE AGREEMENT

### Applicable Master Agreements:

☐ Current Customer Master Agreement #

☒ New Customer Master Agreement #

### Service Documents to be assigned:

List of Affiliates and Agreement(s)/CSO(s)/LOE(s)/Addendum(a)/Pricing Schedule(s), etc.

1. **AT&T Affiliate:** Pacific Bell Telephone Company ("**AT&T**") Enter Name of Agreement/CSO/Addendum/Price Schedule  
Enter date last signed, Billing Telephone Number(s), if applicable
2. **AT&T Affiliate:** [Select One] ("**AT&T**") Enter Name of Agreement/CSO/Addendum/Price Schedule  
Enter date last signed, Billing Telephone Number(s), if applicable
3. **AT&T Affiliate:** [Select One] ("**AT&T**") Enter Name of Agreement/CSO/Addendum/Price Schedule  
Enter date last signed, Billing Telephone Number(s), if applicable
4. **AT&T Affiliate:** [Select One] ("**AT&T**") Enter Name of Agreement/CSO/Addendum/Price Schedule  
Enter date last signed, Billing Telephone Number(s), if applicable
5. **AT&T Affiliate:** [Select One] ("**AT&T**") Enter Name of Agreement/CSO/Addendum/Price Schedule  
Enter date last signed, Billing Telephone Number(s), if applicable

### Service Components to be assigned:

List of Affiliates and Service Components

Ref.	AT&T Affiliate	Service Type	Current Billing Account Number/ Billing Telephone Number/ Circuit ID	New Billing Account Number/ Billing Telephone Number/ Circuit ID
1	Pacific Bell Telephone Company	1 Access Lines	650-508-2536	650-508-2536
2	[Select One]		650-508-4594	650-508-4594
3	[Select One]		650-508-4595	650-508-4595
4	[Select One]		650-590-2257	650-590-2257
5	[Select One]		650-593-2122	650-593-2122
6	[Select One]		650-593-2123	650-593-2123
7	[Select One]		650-595-7406	650-595-7406
8	[Select One]		650-595-7447	650-595-7447
9	[Select One]		650-595-7448	650-595-7448
10	[Select One]		650-637-2921	650-637-2921
11	[Select One]		650-637-2984	650-637-2984
12	[Select One]			
13	[Select One]			
14	[Select One]			
15	[Select One]			
16	[Select One]			

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